SENATE—*Tuesday, June 21, 1988*

(Legislative day of Monday, June 20, 1988)

The Senate met at 9:20 a.m., on the expiration of the recess, and was called to order by the Honorable WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

* * * *with God all things are possible.*—Matthew 19:26.

God of the impossible, for whom nothing is too hard, in this quiet moment at the opening of the day, give us a sense of Your presence, Your power and Your relevance. Help us not to treat faith as impractical, irrelevant or out of place in the pragmatism of politics. What has been defined as the "art of the possible" is the daily agenda of the Senate, but they are confronted with imponderable issues which do not yield to legislative power. Drugs, crime, social decay, war, transcend the simple passing of laws. Even the perfect and absolute moral law of God cannot prevent evil. Law discourages evil—restrains it—but it cannot prevent it. In these critical days when the best and the most the Senate can do is inadequate for impossible demands which are inescapable, help the Senators to acknowledge the limitation of their power and to take seriously the God who is real, near, available, who hears and answers prayer. In His name in whom dwells all power in Heaven and on Earth. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 21, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM PROXMIRE, a Senator from the State of Wisconsin, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. PROXMIRE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

RESERVATION OF LEADER TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of both leaders be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. I hope the distinguished Senator from Wisconsin will be prepared to speak on his 5 minutes.

I thank the distinguished Republican leader.

I yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. DOLE). Under the previous order, there will be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, first I thank the distinguished majority leader and minority leader for their graciousness in permitting me to speak under these circumstances.

WHY UNITED STATES SHOULD NOT PROMISE NO FIRST USE OF NUCLEAR WEAPONS

Mr. PROXMIRE. Mr. President, one of the most beguiling appeals for peace is for a no first use of nuclear weapons declaration by our Government. This Senator believes that such a declaration would under present circumstances be a serious mistake. How can this be? Why shouldn't our Government renounce the use of nuclear weapons until and unless our country is subject to a nuclear attack? Don't we surrender the moral ground on nuclear peace to the Soviet Union by our refusal to join the Soviet Union in pledging that under no circumstances would we be the first to use our nuclear weapons?

No. We do not. Our moral objective is not simply to avoid nuclear war. It is to avoid a major conventional war, which regardless of non-first-use of nuclear weapons pledges would very likely be converted into nuclear war before it reached its final resolution. Is it realistic to presume that any nation would accept defeat in a conventional war when it still had a nuclear arsenal great enough to annihilate the military forces that were pushing it to defeat? Would the French have desisted from using nuclear weapons when the Nazis were at the outskirts of Paris in 1939, if they had this power in their hands? Can there be any doubt that if Hitler and his defeated Nazis had had a nuclear weapon arsenal in the closing days of World War II in Europe, they would have chosen to take the world down to total destruction with them in their dying throes? Wouldn't the beleaguered Soviet Union under Stalin have been almost certain to have resorted to nuclear weapons—at some level—to stop the invading Nazis when the Axis powers were ravaging, looting, and killing 20 million Russians in their deep penetrations into Russia in World War II?

A pledge not to be the first to use nuclear weapons would have been a frail and fragile reliance in a war that involved even the conventional weapons of 45 years ago. But today's conventional weapons have advanced enormously in the power, precision, reliability, and certainty that those conventional weapons can now cause destruction very close in intensity and brutality to the destruction caused by nuclear weapons. Even if somehow a nation armed to the teeth with nuclear weapons should resist the use of that nuclear arsenal right up to surrender, strictly and exclusively conventional weapons could bring widespread ruin every bit as devastating as a nuclear war. The principal difference is that the conventional destruction would take longer. But not much longer. The advances in the past 40 years in conventional weapons such as smart weapons, incendiary weapons, blockbusting conventional bombs, chemical weapons, and biological weapons the advances in all these weapons have been so great that a so-called conventional war would simply be a longer nightmare than the sharp, swift destruction of nuclear weapons.

So what do we accomplish by making a no-first-use of nuclear weapons pledge? Not much. And what do we lose by making such a no-first-use pledge? Everything. How can this be? Because a no first-use pledge makes a major conventional war far more likely, especially under present circumstances in Europe. Consider: The Soviet Union's most highly mecha-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

nized, crack divisions are poised at this very moment on the north German plain, cheek to jowl with the West German border. There are no NATO forces confronting these Warsaw Pact forces at the West German-East German border. The NATO forces are fewer. They are largely pulled back in reserve. Of course, NATO could move stronger forces into position much closer to the East German border. But such a move would create a tenser, more explosive situation. War might become more rather than less likely. So what keeps the pact forces from taking advantage of their clear conventional military edge? A big factor is the capacity of NATO to respond with tactical and short-range nuclear, I repeat nuclear, weapons if the pact breakthrough threatens to sweep through Western Europe.

This Senator happens to believe that NATO could probably meet and defeat an attack from Soviet and pact forces with conventional weapons. I believe the quality of NATO troops and equipment outweighs the clear advantage the pact enjoys in numbers of troops, tanks, planes, and artillery. But it's a guess. No one knows. The Soviets may very well believe they can use their more numerous forces to secure a swift and decisive European victory. What keeps them from attacking? Many things. But primarily the likelihood that any success they enjoy would end when they encountered nuclear weapons that would stop them cold. Of course, the Soviets and the pact could respond with their own nuclear weapons. Such a response would have one consequence: utter and total mutual, I repeat mutual destruction. There would be two total losers. This is precisely why the past 40 years has constituted the longest period of peace in Europe in 400 years.

So what do we accomplish by refusing to make a no-first-use-of-nuclear weapons pledge? We stop a major conventional war that would, in all likelihood, with or without the no-first-use pledge, end in nuclear war. This is a painful irony for those who yearn for world peace. But it is clear that the way to achieve that peace is keep our nuclear deterrent fully credible. And that means no promise of no first use of nuclear weapons.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. BYRD. Mr. President, will the Senator yield to me for a unanimous-consent request?

Mr. COCHRAN. I have not sought recognition. I was waiting.

Mr. BYRD. The Chair recognized the Senator. Will the Senator yield to me?

Mr. COCHRAN. I am happy to yield.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that S. 1323 not lose its status, that the status of S. 1323 as now pending not be prejudiced by any motion to go to any other matter which may be agreed to by the Senate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that no call for the regular order bring down S. 1323 while any other matter which has been brought up by motion is before the Senate.

The PRESIDING OFFICER (Mr. LEVIN). Is there objection. Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I thank the distinguished Senator for yielding.

HOWARD BAKER

Mr. COCHRAN. Mr. President, this past Thursday, in the Clarion Ledger newspaper in Jackson, MS, there was an editorial commending our friend Howard Baker on his service to the Nation and to President Reagan in his capacity as Chief of Staff. I want to join those who have spoken already on the floor in connection with Senator Baker's announcement that he will be resigning his position in the administration at the end of this month.

Howard Baker has really done a magnificent job for all of us. He has provided very sound advice and counsel to the President and to many others in the administration and here in Congress during the time he has served as Chief of Staff. I was not surprised that he was a great success in this new job, this new undertaking, having observed him at close range, as we all had an opportunity to do here in the Senate, both as minority leader and then as majority leader of the U.S. Senate.

He brought to the position of Chief of Staff some very special talents and personal qualities, as well as experience, which have equipped him in a unique way to serve with such distinction in our Government.

He is likable. He is bright. He is energetic. He is a person of unquestioned integrity. And so it is with some degree of sadness, really, that I note that he will not be working full time in an official capacity in this administration after the end of this month.

We will all miss him, but we appreciate so much the manner in which he has handled his duties and the special competence he brought to the position he has held.

Mr. President, I ask unanimous consent that a copy of the editorial I described from the Clarion Ledger be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Clarion-Ledger, Jackson, MS, June 16, 1988]

HOWARD BAKER—REAGAN, NATION OWE GRATITUDE

The resignation of former U.S. Sen. Howard Baker as White House chief of staff certainly is a blow to the remaining days of the Reagan administration, but he has left the White House on stronger footing than when he began.

President Reagan owes Baker special gratitude for the job he has done.

The former Tennessee Republican senator gave up his own presidential ambitions to come to the aid of his president when he was needed the most.

The credibility and effectiveness of the Reagan administration was sliding badly as a result of the Iran-Contra scandal. Baker picked up the pieces of a White House left in disarray after Donald Regan had alienated everyone, including the president's wife. He defended the president successfully and put programs back on track in Congress.

Baker was respected by leaders of both parties and was known for his ability to forge compromises on tough issues. Throughout his Senate career, he rose above partisanship, especially during the Watergate hearings and in his support of President Carter's Panama Canal Treaty. Joining the White House staff was said to have brought it "instant credibility."

Reagan since has put himself above the Iran-Contra affair, has been successful in restoring a relationship with the Soviet Union and has patched up relations with Congress to a great extent.

Baker is going back to Tennessee to practice law and take care of his wife, who is ill. He says he would not turn down a vice presidential offer from George Bush, but doesn't expect one.

Baker will be replaced for the remainder of the Reagan administration by his own deputy at the White House, Kenneth Duberstein.

Baker served the nation well in the U.S. Senate and demonstrated the best in American government by taking the chief of staff job when Reagan needed him.

Reagan and the country owe him a full measure of gratitude.

AGREEMENT TO REDUCE BEEF AND CITRUS QUOTAS IN JAPAN

Mr. DASCHLE. Mr. President, I rise this morning to congratulate negotiators on both sides in the successful resolution in the agreement to reduce both beef and citrus quotas in Japan over the next 4 years. This has been an extraordinarily contentious issue on both sides. It is an issue that many of us thought may not be resolved in the coming months.

As a result of very arduous work and commitments made by Japanese negotiators in particular, we were able to reach an agreement yesterday. The agreement, at long last, will abolish Japanese quotas entirely by 1991. It will increase by 60,000 metric tons per year the amount of imported beef allowed within Japan, reaching 394,000

metric tons in the fiscal year 1990. This should nearly double the opportunities for beef exports from the United States to Japan in the next 4 years.

It is estimated that the opportunities for new markets in Japan for the United States could reach more than $1 billion by the time these quotas are completely open. In addition, market access for orange juice concentrate will be increased from 8,500 metric tons in 1987 to 15,000 metric tons in 1988. It will allow the importation of 40,000 metric tons in fiscal year 1991.

Beef exports have been a very important part of the commercial opportunities that exist for not only my State of South Dakota, but for the country as a whole. With the abolition of these quotas, we are opening doors farther than ever before. We are providing new opportunities for a commercial relationship between our two countries that bodes very well for our relationship in many other areas, as well.

So I hope that, as we commit ourselves to this new agreement, we look to other countries to begin to develop the same cognizance of the importance of reducing all trade barriers. Let us hope that others will look to this agreement as a real model in the relationship that we hope to hold with them as well.

I must say, though, that, as optimistic as I am about the prospects for a continued strong economic relationship with Japan, I would remind my colleagues that the 1984 beef and citrus agreement called for the complete abolition of beef quotas by March 31 of this year. Unfortunately, that agreement was not reached. Let us resolve that neither side will fail to keep both the letter and the spirit of the agreement signed yesterday.

I hope, Mr. President, that the commitment that we now have within the Japanese Government will bring forth the complete abolition of beef and citrus quotas. Let us hope that, as a result of this agreement; we can develop even closer ties, a better commercial relationship, and the prospects for greater trade between the two countries in the future.

Mr. President, I ask unanimous consent that materials which explain the agreement in greater detail be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

PRESS RELEASE BY U.S. TRADE REPRESENTATIVE CLAYTON YEUTTER

Representatives of the governments of the United States and Japan announced today an ad referendum agreement which calls for the elimination of Japanese import quotas on beef and citrus products. The agreement was reached by United States Trade Representative Clayton Yeutter and Japanese Minister of Agriculture Sato as the culmination of several months of intense negotiations. The negotiations broke down and had to be re-started twice before agreement was finally reached.

"The United States is pleased with the outcome," Yeutter said from Tokyo, "though we would like these markets to open sooner than is contemplated. It is regrettable that the process of market liberalization was not begun several years ago. Nevertheless, we are grateful that the government of Japan is now prepared to phase out all import quotas on these products."

"What Japan is now prepared to do on beef and citrus is a recognition of its responsibility as a major economic power running a very large trade surplus," asserted Yeutter. "And it is also what Japan must do in order to comply with the rules of the General Agreement on Tariffs & Trade (GATT)."

"This new agreement," said Yeutter, "will open up excellent export opportunities for American beef and citrus producers. U.S. export sales in these products should increase soon, and they could easily exceed $1 billion annually when the accord is fully implemented."

The agreement calls for a phase out of import quotas on beef products and fresh oranges over a three year period, and quotas on orange juices over four years. Japan will have the privilege of temporarily raising duties on beef products to certain specified levels during a second three year adjustment period, at the end of which the Japanese beef market will be fully liberalized.

Yeutter noted that since the quotas will be phased out, rather than eliminated immediately as the U.S. had requested, the government of Japan had agreed not only to significant increases in market access in the interim but also to certain other actions, including duty reductions on such products as fresh grapefruit, fresh lemons, frozen peaches and pears, walnuts, pistachios, macadamias, pecans, pet food, beef jerky, sausage, and pork and beans.

The agreement also calls for a three year phase out of the import management operations of Japan's Livestock Industry Promotion Corporation (LIPC), and for greater flexibility in the administration of the import programs for both beef and citrus products during their respective phase out periods.

"Both negotiating teams worked extremely hard on this difficult and complex issue, over a period of many weeks," added Yeutter, "This was one of the most challenging bilateral negotiations we've ever undertaken. I wish particularly to commend the efforts of Deputy USTR Michael B. Smith, who led the U.S. team during most of the negotiations. I commend as well the Japanese team for its positive and courageous attitude throughout, and the Japanese government for its willingness to take the right course in this politically sensitive area.

UNITED STATES-JAPAN AD REF SETTLEMENT ON BEEF AND CITRUS—SUMMARY OF PROVISIONS

BEEF

During Japan's Fiscal Years 1988-90 (4/1/88-3/31/91), Japan's market for imported beef will increase 60,000 metric tons per year, reaching 394,000 mt in JFY90. By 1901, Japan's beef imports should nearly double from current levels. Once Japan's market is completely liberalized, we expect the value of U.S. beef exports to double at least to more than $1 billion per year.

Japan's Livestock Industry Promotion Corporation (LIPC) currently controls most beef imports. LIPC will phase out its involvement in beef imports by 3/31/91.

LIPC surcharges, on top of the current 25 percent ad valorem tariff, now are equivalent to an ad valorem tariff rate of 96 percent. During the JFY88-90 period, LIPC surcharges are expected to decrease and the tariff will remain at the current level. Once LIPC involvement with imported beef ends, Japan will set a temporary tariff of 70 percent in JFY91, declining to 60 percent in JFY92, and 50 percent in JFY93 and thereafter. Japan will negotiate for this level in Uruguay Round tariff negotiations.

During the JFY91-93 period, if imports appear likely to exceed a level calculated at 120 percent of the previous year's imports or import allocation (whichever is higher), Japan may consult with beef-exporting countries about actions to discourage disruptive import levels. If imports exceed the 120 percent level, Japan may unilaterally impose an additional 25 percent ad valorem tariff for the remainder of that fiscal year. As of 4/1/94, safeguard measures will be limited to only those permitted under the GATT.

During the JFY88-90 transition period, the proportion of imported beef that will be transacted under the Simultaneous Buy-Sell (SBS) program will increase from 10 percent of the total general quantity handled by LIPC in JFY87, to 30 percent in JFY88, 45 percent in JFY89, and 60 percent in JFY90.

Reforms of the SBS to increase the transparency of its operations, eliminate any discrimination between the treatment of grain and grass-fed beef, and facilitate the participation of new market entrants will be undertaken immediately. The SBS system allows buyers and sellers to negotiate contracts directly.

Market access for hotels will be expanded to 10,000 mt in JFY88, 13,000 mt in JFY89, and 16,000 in JFY90 (4,000 mt in JFY87).

Japan's import restrictions on prepared and preserved beef products will be eliminated within two years. This settles one of the "GATT-12" product categories.

FRESH ORANGES

During the JFY88-JFY90 period, market access will be expanded by 22,000 mt annually, reaching 192,000 mt in JFY90 (JFY87 level: 126,000 mt; the increase the previous four years was 11,000 mt/yr.)

As of 4/1/91, imports of fresh oranges will be permitted in unlimited quantities and the only restriction will be the current tariff (now bound at 40 percent in season and 20 percent off season). U.S. annual exports of fresh oranges are expected to increase by more than 50 percent in volume and $25 million in value.

ORANGE JUICE

Market access for orange juice concentrate will be increased from 8,500 mt in JFY87 to 15,000 mt in JFY88, 19,000 mt in JFY89, 23,000 mt in JFY90, and 40,000 mt in JFY91.

As of 4/1/92, imports of orange juice will be permitted in unlimited quantities and the only restriction will be the current tariff (now set between approximately 25 percent and 35 percent depending on sugar content). U.S. exporters will compete in an estimated $50 million import market.

Special access, not subject to the blending requirement, will be provided for imports of single-strength orange juice and orange juice mixtures as follows: 15,000 kl in JFY88, 21,000 kl in JFY89, and 27,000 kl in JFY90. (Imports of these products are now

essentially banned.) As of 4/1/91, imports will be permitted in unlimited quantities.

Imports of single-strength orange juice in small containers for use in hotels will be permitted in unlimited quantities this year.

The requirement that imported orange juice be blended with mikan juice produced in Japan will be lifted for 40 percent of the concentrated orange juice imported in JFY88, 60 percent in JFY89, and completely eliminated as of 4/1/90.

OTHER PRODUCTS

The Government of Japan has agreed to the following tariff reductions to be effective 4/1/89:

Grapefruit—From 25% in season and 12% off season to 15% in season and 10% off season.

Lemons—From 5% to 0%.

Frozen peaches/pears—From 20% to 10%.

Pistachios—From 9% to 0%.

Macadamias—From 9% to 5%.

Pecans—From 9% to 5%.

Walnuts—From 16% to 10%.

Bulk pet food—From 15% to 0%.

Pet food in retail packs—From 12% to 0%.

Beef jerky—From 25% to 10%.

Sausage—From 25% to 10%.

Pork and beans—From 28% to 14%.

Effective 4/1/90, the Government of Japan will reduce the tariff on grapefruit in season to 10 percent.

ORDER OF PROCEDURE

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. BYRD. Mr. President, will the distinguished Senator from Vermont yield to me?

Mr. LEAHY. Of course.

Mr. BYRD. Mr. President, in addition to the 5 minutes the Senator from Vermont is entitled to under the order, I yield the 10 minutes under the standing order which I have reserved to the distinguished Senator.

Mr. LEAHY. Mr. President, I thank the distinguished majority leader. I appreciate his courtesy in doing that. The leader knows that I wish to give a report on the trip that a number of us—Senators DASCHLE, CONRAD, BURDICK, MELCHER, and BAUCUS; and Congressman JOHNSON and Congressman DORGAN—took over the weekend to examine the drought in the upper Midwest. I appreciate the distinguished Senator from West Virginia yielding me time.

Mr. COCHRAN. Will the Senator yield to me for a question?

Mr. LEAHY. Yes.

Mr. COCHRAN. I just wonder if there are any Republicans on the drought task force? Those who were named so far have all been Democrats.

Mr. LEAHY. They were all invited, I say to the distinguished Senator from Mississippi. In fact, one who was not on the drought task force, Senator PRESSLER, was invited but could not come.

Senator LUGAR, of course, is the ranking member. Before I even put the trip together, I discussed it with him and I offered also to come to Indiana. But, because of other conflicts in his schedule, he said he appreciated the offer but this would not be a good time.

Mr. COCHRAN. I thank the distinguished Senator. I just wanted to be sure that the RECORD reflected that there are three Republicans on the drought task force and we had a meeting last Friday, which you and I both attended, and we all are working hard in a bipartisan manner to try to identify ways in which those damaged by the drought could be helped.

Mr. LEAHY. I wish that the Senator would wait until I get done with my speech. I compliment him on his efforts, as well as those of others. There have been no meetings except with the attendance of the Republican Members. The Senator from Mississippi, I am sure, was just about to mention the exceptional way that the task force was set up. At my request—not at the request of the Republicans, but at my request—an equal number of Republicans as Democrats were appointed to the Senate task force. I am sure the Senator from Mississippi was about to mention that.

And the first meeting of the task force, as I recall, there not only an equal number of Republicans and Democrats, but also I had invited a number of Republican Senators who were not on the task force, but were from States involved. As I said, at this particular meeting, Republican staff members were there as well as Democratic staff members; Republican Senators from the areas visited were invited to come and because they had other matters to attend to, were unable to be there.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator very much and compliment him on the fact that this has been a bipartisan effort and he has included in the task force an equal number of Republican Members and Democrats. And also as he pointed out, Senators GRASSLEY and KARNES, and others who are from an area of the country that is being devastated by the drought, were invited and participated. Senator BOND, of Missouri, was also a participant in that meeting last Friday and he helped in a very constructive way, offering some good suggestions for consideration. I thank the distinguished Senator for yielding, and I apologize for interrupting his remarks. I just wanted to make sure that Republicans were recognized for participating in this drought relief effort.

Mr. LEAHY. I do not know how much more I could recognize them, Mr. President, unless I just turned the whole thing over and then it would lose its bipartisan nature. Right now, their recognition has been equal.

DROUGHT CONDITIONS IN THE NORTHERN GREAT PLAINS

Mr. LEAHY. Mr. President, I would like to report to my colleagues about a trip I took to the Northern Great Plains this past Saturday to assess the impact of the drought that grips much of this country. It was an important trip. We traveled probably 4,000 miles by plane and helicopters in what was close to a 20-hour day.

We have all seen the news reports. I have seen many charts and graphs describing this drought in hearings we have held in the Agriculture Committee and in meetings with the Secretary of Agriculture and Members of the House of Representatives.

But I went to the Northern Great Plains to see first-hand the extent of this prolonged drought. I went to try and understand the degree to which this bad weather has affected lives. I went to listen to those affected, to hear their suggestions as to what the Government might do to help.

A delegation of six Senators: Senators BURDICK, MELCHER, BAUCUS, DASCHLE, CONRAD, and myself and one Congressman, Representative TIM JOHNSON, traveled to South Dakota, North Dakota, and Montana.

What did we see, Mr. President?

We saw a brown and brittle land. These three States, along with Minnesota, are suffering through the worst drought, this early in the season, that has occurred in my lifetime. Estimated crop losses run in excess of $1.8 billion in these three States alone. And that's a conservative estimate. In North Dakota they estimate that the overall effect of it could be as much as $2.7 billion.

This drought comes at a time when some of these farmers were just getting their feet back on the ground. They were standing to get over the 5 years of depression that settled over rural America beginning in 1982. But now, with their crops burned and their livestock hungry, these farmers are once again threatened with bankruptcy.

We visited a livestock barn in Aberdeen, SD. We talked to farmers and ranchers. Herman Shumacher, a manager of a local livestock barn, told us that nearly three times as many breeding cattle were being sold than normal. There is no grass for the cattle to eat. The farmer has two choices, move his cattle to another part of the country where there is some grass available or sell. Many can't afford the additional rent. So their cattle go to the auction. Prices have fallen nearly $100 per head in the past week as entire herds are being sold off.

This can and will have some severe long-term effects on our meat supply. Dwindling foundation herds now

means decreasing meat supplies in the future.

In North Dakota, we saw a totally devastated spring wheat crop. We dug in the dry earth and found seeds that had been in the ground nearly 4 weeks. These seeds will never sprout. The wheat that has emerged is dying. It will not bear fruit this year.

In fact, the only protein in wheat fields or hay fields or pastures around Bismarck, ND, was the grasshoppers—their concentration is increasing. They are hungry too.

We flew for more than 20 miles over some of the best agricultural land in Montana. In that whole area around Great Falls, we saw no grass for grazing. The grasslands looked like they were covered with volcanic ash. Watering ponds were dry. Stream beds were just ugly marks across the plain. In the few parts where water was left, it was turning brackish; soon to be unfit to drink.

This is a part of the country where they know how to survive without much moisture. They practice strip farming here. They leave half of their land out of production every year to conserve moisture. They plant trees as wind screens.

But the heavy snows they count on to replenish their soil's moisture did not come. The spring rains did not come.

The best farming techniques in the world could save only a small portion of their crops. And nothing could be done for their pastures.

Mr. President, I had not been to these parts of Montana before. I had visited these same parts of North and South Dakota. But I know what it is supposed to look like. It is supposed to be something that would really bring joy to the heart of a farmer or rancher this time of year. There should be miles and miles and miles of fields, abundant with the harvest that the most productive nation in the world has been able to provide.

Instead, you would think you were going across a moonscape. You wonder what came through here? It is as though some giant hand came and just scooped out this productive earth, this productive part of our Nation, and left nothing but a deep and empty scar across the land.

Mr. President, livestock means more to the agricultural economy of Montana than wheat. I saw about 10 cows on the plains of Montana. I saw more antelopes than beef cattle. There is nothing to eat there.

So, I am here today to report to my colleagues that lives are being devastated, the earth is parched, and crops have been destroyed.

There are other concerns. This drought is not localized in the northern Great Plains. The Midwest, certainly the State represented by the distinguished Presiding Officer, and much of the southeastern United States is increasingly dry. Corn in Ohio and Indiana is wilting and is in danger of dying.

A drought of this magnitude is a national crisis. Every citizen can be affected. Every part of the country has reason to be concerned. We know that we will eventually see increased food prices because of this drought.

Increased livestock sales means lower beef prices today, but a dwindling supply and much higher prices in 1989 and 1990.

The Chairman of the Federal Reserve Board had better start making plans for next year. He will have to respond to the inflationary impact of rising farm prices.

When we begin to sell our foundation livestock herds, when our fields cannot produce, and when our farmers lose the financial means to try again next year, our national security is threatened; not only national security but part of the soul of a nation, whose foundation is agrarian, is also damaged. We must have a bipartisan response to this emergency.

Drought is not a partisan issue. It is a human crisis. Our failure to act will be measured in human terms.

We have established a bipartisan task force comprised of Republicans and Democrats—Senators; Congressmen; and the Secretary of Agriculture. We have an equal number of Democrats and Republicans representing the Senate on this task force, and that was at my suggestion to demonstrate the bipartisan nature. I am on there. Senator LUGAR is on there. Senator PRYOR is, Senator COCHRAN, Senator DOLE, and Senator MELCHER. And we have invited other Senators from the areas most affected to come and supply us with their expertise. And they have done this.

Senator DASCHLE came to us from South Dakota. Senators CONRAD and BURDICK came to us from North Dakota. Senators MELCHER and BAUCUS came to us, from Montana. But other Senators, Senator BOND, Senator GRASSLEY, Senator HARKIN, Senator METZENBUAM, Senator GLENN, the distinguished Presiding Officer, Senator LEVIN, and Senator RIEGLE—Senators from States also affected have given us of their expertise.

And all the way through this, Mr. President, everyone saying that you cannot believe the impact of the drought they are seeing in our States.

Mr. President, the members of this task force must work together and develop a response to this crisis. A response we can all support and that will help relieve some of the suffering.

Our farmers do not need more studies to tell them that crops are dying. Our farmers do not need studies to tell them that livestock are running out of food. Our farmers do not need a jumble of legislative initiatives that either do not do enough or come too late to do anyone any good.

Our farmers need rain most of all. For that, we can only hope and pray.

But our farmers also need help. On that point, we can work together to craft legislation that will be effective, reasonable, and targeted to those who need it the most and to help them now.

The laws we have enacted in the past provide the Secretary of Agriculture discretionary authority to use several programs to help alleviate the distress. He has used many of those programs. But more must be done.

I personally pledged my efforts to the farmers and ranchers I met in North Dakota, South Dakota, and Montana over the weekend. I make that pledge to all farmers who are suffering from this drought. I will do what I can, and I will do it quickly.

Mr. President, few things have affected me more in my 14 years in the Senate than what I saw this weekend. I know some of the farmers out there. I met them on other trips of the Senate Agriculture Committee. These are good farmers and ranchers. These are men and women who love the land, who could outproduce anybody anywhere in the world. They now sit there and they say not in their lifetime have they seen anything like this.

After going through some of the most difficult times in their farming career, they finally saw a chance; they were going to make it after all. They say: "You know, it is all we can do to keep from losing hope."

This is a very, very serious matter. Nothing we see on television, nothing we read in the papers can begin to describe what it is really like.

So, Mr. President, I am sorry to bring such sad news to the Senate this morning, but it is news that affects every single one of us, whether we come from an agriculture area or not. We all eat; we are all in this country together. We are all going to be affected by what is happening. Our trade policy will be affected and inflation will be affected but and most importantly, the lives of hundreds of thousands of the finest men and women in America are being affected in a way that they have no control.

I hope, Mr. President, that our drought task force can continue to work in a bipartisan, effective manner and give some hope to these people.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

COMMENDATION OF PATRICK J. LEAHY

Mr. DASCHLE. Mr. President, I rise to commend the distinguished Senator from Vermont, the chairman of the Senate Agriculture Committee, for his

responsiveness and his bipartisanship in the whole effort. I have not known a chairman more responsive to the needs of his members than has been the distinguished Senator from Vermont.

He has listened. He has been sensitive to our needs. He has demonstrated as bipartisan an approach to this problem as any Chair that I have ever had the pleasure to work with. I want to express my sincere gratitude to him for that responsiveness and his willingness to commit his personal time and that of the committee to see that we deal with this issue in as effective a way as possible.

This trip was not an easy one. We left at 7 o'clock in the morning. We arrived back in Washington at something close to midnight. He could have been anywhere, but he was with us. He could have invited anyone on this trip, but he invited Republicans and Democrats. He made it clear that the purpose of this trip was threefold: First, to gain a better assessment of the situation as it exists; second, to get firsthand the advice and information about what we ought to do about it; and third, to call national attention to the significance of the problem as it exists today. I think with all three goals, we surpassed our expectations.

So I do commend him. As he has so eloquently stated this morning, the situation cannot be exaggerated. We are losing $30 million a day in the State of South Dakota in agriculture alone. Thus far, the cost, all things considered, has been more than a billion dollars in my small State. The repercussions and the ramifications of what he is addressing this morning are very real.

I hope that we could address this problem quickly and very resolutely. I hope that as part of the solution that we guarantee advanced deficiency payments, that we ensure the emergency feed assistance program is used wherever possible, that we open up as broadly as we can the water bank and the conservation reserve programs. I know the chairman has accepted all of these bits of advice, and we will begin drafting a piece of legislation at the very earliest possible date.

Once again, Mr. President, let me commend the chairman. I was one of those fortunate people who traveled with him. I know the impact that it had on him personally, and I know the commitment he holds to resolving this issue as best we can legislatively.

I yield the floor.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from South Dakota. He has been at every one of our meetings. He has been there fighting for his State and his region. It means a great deal to all of us.

The drought task force will meet on the House side tomorrow and Senators or any staffs of Senators who wish to come over to that meeting will be welcome. The Secretary of Agriculture will also be there.

We are in this together, as I said before. We understand this. It is not just the farm States that are affected. All 50 States are affected. America's national security is ultimately affected. Certainly our economic prosperity is affected. We are in it together.

I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

DROUGHT CONDITIONS

Mr. EXON. Mr. President, I want to add my words of thanks and praise to the distinguished chairman of the Agriculture Committee. I want to thank him, Mr. President, and the distinguished Senator from South Dakota and the other members of the Agriculture Committee who made that difficult trip into the Midwest this past weekend.

It so happened that I traveled the breadth of Nebraska this last weekend and can give you a very short, firsthand report that the situation is extremely serious.

When those of us in the Midwest think about agriculture, we traditionally do not think of a Senator from Vermont being primarily concerned about the heartland of America, but the Senator from Vermont, the chairman of the Agriculture Committee, has shown the bipartisan leadership that is simply outstanding in this area.

The ringing of the bells and the alert signals he is sending today are entirely appropriate. I thank him on behalf of the farmers and ranchers of my State and the other States in the Midwest that I have been associated with in their cause for a long, long time for his understanding, forceful leadership in this area.

I simply say to the chairman of the committee, Godspeed in your efforts to bring about the planned legislation that we hope will not be necessary if the rains come. But with the pattern that has been set up and as one who is old enough to remember as a very young lad the last great, all-encompassing drought that hit in the 1930's, I will simply say that we have to be prepared to move into this area.

I simply would say that Nebraska, as hard hit as it has been, has substantial irrigation, which has been of some help. But the dry land sectors of Nebraska are particularly hard hit, as are those in our neighboring States. This drought goes clear over into Illinois, Indiana, Ohio, Wisconsin, and, to some extent, Michigan. I would point out the drought in the 1930's did not devastate those latter States.

I would simply say we must plan and prepare legislation now, but we have a great number of statutes already on the books that give the administration a chance to move in an expeditious fashion.

I simply point out that one thing I wish we could get the Department of Agriculture to be a little more forthcoming on right now—and I salute the Secretary of Agriculture. I think he basically understands a difficult situation.

I will simply say the first thing we should do is begin to plan right now under the present law to do something about the conservation reserve. The conservation reserve is on fragile land, but the conservation reserve also, I want to point out, was clearly set up to accommodate the food needs of America and the needs of farmers during situations that confront us right now.

Certainly there is a concern that we do not want to do haying or cattle feeding to the extent that it would devastate these acres. If a plan were set up now by the Secretary of Agriculture for increased haying, for increased grazing, then there could be a proper balance between the nonconservation lands that are not in the reserve and the conservation reserve to give a balance to protect both the lands not in the conservation reserve and those that are. I think that is help which could be given right now without additional legislation but probably more is needed. I salute and have every confidence in the Senator from Vermont that he will see on a bipartisan basis that these needs are met.

Mr. LEAHY. Mr. President, I appreciate the Senator's concern for the conservation reserve. It is a very delicate problem. I should also note that I have relied very much throughout on the wise counsel of the senior Senator from Nebraska. He has been one who has given advice to us. It has been solid advice. It is advice based on experience and knowledge of what is practical and what is available. It has been very helpful to me. I salute him for that.

THE DROUGHT

Mr. PRESSLER. Mr. President, much of my State is suffering from severe drought conditions. With rising commodity prices many grain farmers are concerned that their deficiency payments will be lower or no deficiency payments will be made. Grain production will be substantially reduced, so many farmers will not receive their income from the market. The decline in deficiency payments must be addressed in the drought assistance legislation that is being developed.

Farming is a cyclical business; there are droughts and there are good crop years, but from what I have seen and heard we are in crisis situation. This coming weekend I will be touring parts of the drought area in South Dakota

with at least one of my colleagues. I am also working with other Senators on legislation to provide drought assistance and address the deficiency payment issue. The present budgetary situation will make it very difficult to get additional funding for disaster assistance. We should modify the existing farm program, particularly the deficiency payment provisions, to assure farmers hard hit by the drought, that they will receive a certain level of deficiency payments. Such action would help farmers in this difficult situation. We should remember that some of the farmers who planted and got their crops started are not eligible for 0-92 Program. They are in a situation where their production will be substantially reduced and they will not qualify for deficiency payments. Money for these payments was included in the budget. Perhaps the savings from reduced deficiency payments could be used to finance disaster assistance programs. We need to keep all of these concerns in mind as we continue working toward a solution to this extremely important problem.

Mr. President, I want to clarify the earlier discussion on the recent Agriculture Committee drought tour of Montana, North and South Dakota. Last week on Wednesday evening my office received a call inviting me to participate in the drought tour the following Saturday. This was very short notice and prior commitments prevented me from joining the group on Saturday. In addition, I had already scheduled a drought meeting in South Dakota the weekend of June 25 and 26. As many Members have indicated, we must address the drought issue on a bipartisan basis. During times of natural disaster it is critical that we work together to expedite the delivery of necessary assistance. I look forward to working with the members of the drought task force and others to develop and enact whatever legislation is necessary to address this severe problem.

PENTAGON SCANDAL

Mr. PRESSLER. Mr. President, I commend Senator GRASSLEY and others who have spoken out strongly about what is happening in the Pentagon. It is a sad day for all of us in Government when such a scandal occurs. We must move quickly to prosecute those who are involved. This is not a Democratic or a Republican problem. An ethos has grown up in the military-industrial system to take as much of the taxpayers' money as possible, and that is very bad. Somehow the ethics in military contracting must be changed. Somehow we must establish a new set of ethics within the Defense Department and among contractors.

BICENTENNIAL MINUTE

JUNE 21, 1841: FIRST EXTENDED FILIBUSTER

Mr. DOLE. Mr. President, 147 years ago today, on June 21, 1841, the Senate began its first extended filibuster. To be sure, this was not the first occasion for the use of dilatory tactics in the Senate. In 1789, the first year of the Senate's existence, such tactics were employed by those opposed to locating the Nation's permanent Capital along the Susquehanna River. Again, in 1825, after listening to Senator John Randolph speak for more than 30 minutes, an editor reported that he "had been told that the bankrupt bill was before the Senate—but, during the time stated, he, Randolph never mentioned, or even remotely alluded to it, or any of its parts, in any manner whatsoever." In fact, dilatory debate was frequent enough that by 1840 Henry Clay of Kentucky urged adoption of a rule that would allow a simple majority to bring debate to a close. However, filibustering as a legislative tactic was not openly acknowledged until 1841, when Democrats and Whigs "squared off" over the establishment of a national bank.

Since the mid-1830's Whigs in the Senate had strongly pressed for bank legislation, but Democratic Presidents Andrew Jackson and Martin Van Buren had blocked any hope of success. So, when the Whig-supported John Tyler rose to the Presidency in 1841, Clay and his supporters sought passage of a measure that would centralize the Nation's banking operations. A Select Committee on Currency, which Clay chaired, reported such a bill to the Senate on June 21.

Although the Whigs had a seven-vote majority over the Democrats, a coalition of States rights Whigs and antibank Democrats decided to discuss the bill at length. When John C. Calhoun objected to Clay's attempts to exercise iron control over Senate proceedings, Clay indignantly vowed to ram through a provision for majority cloture. The opposition countered with the Senate's first acknowledged filibuster, which lasted 14 days and resulted in the defeat of Clay's bill.

U.S. INTEREST IN VIETNAM INCREASES

Mr. PRESSLER. Mr. President, I have noted an increasing amount of interest in this country on the subject of Vietnam. As our distinguished colleagues know, two Senate resolutions addressing United States relations with Vietnam have been introduced this year and the Foreign Relations Committee is scheduling the first of what I hope will be several hearings on these resolutions. Just last week, I testified before the House Select Committee on Hunger on the topic of the food crisis in Vietnam.

The major newspapers and magazines also have begun to publish more articles and commentaries on Vietnam and United States-Vietnamese relations. One example appeared in the June 4, 1988, edition of the Nation. Although I may not agree with all of the interpretations of this article, it provides some interesting perspectives on the increasing amount of public interest in Vietnam. Mr. President, I ask unanimous consent that this article appear at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

REPUBLICAN OVERTURES TO HANOI

(By George Black)

The disintegration of the Reagan Administration can be measured by its more rococo public symptoms—the Noriega affair, Nancy's astrologer, Edwin Meese. But there are smaller barometers, too, seen for the most part only by specialists. In that second category, nothing epitomizes the fatuousness of late Reaganism better than the State Department's inexplicable delay in granting a visa to the Vietnamese economist Ngyuyen Xuan Oanh. This is not just another routine McCarran-Walter Act instance of hostility on ideological grounds. For Oanh is the architect and apostle of the program of economic liberalization that is now under way in Vietnam. The State Department's blunder was all the more troubling because it came on the eve of the Moscow summit, which could open the way to resolving the continuing conflict in Cambodia.

Oanh is hardly an unfamiliar figure in the United States: Educated at Harvard, he was a governor of the former Bank of South Vietnam; since his long stay in this country, from 1950 to 1963, many of his American colleagues and friends know him affectionately as "Jack Owen." Oanh was the brains behind the establishment last year of the Industrial and Trade Bank in Ho Chi Minh City—the first private bank permitted in Vietnam since the fall of Saigon in 1975—and one of the principal drafters of the country's new law on foreign investment, passed in January. Shortly before his planned visit to the United States, he had been on a five-country trip to solicit investors from Thailand, Singapore, Japan, Taiwan and South Korea.

The strangest part of this whole episode was the origin of the most vocal complaints to the State Department. They came not only, as one might expect, from liberal groups like the U.S.-Indochina Reconciliation Project, the sponsor of Oanh's visit. One critic was Senator Larry Pressler, the South Dakota Republican, who had met with Oanh during a trip to Vietnam in April. In a letter to Secretary of State George Shultz, he complained: "Our policy may be designed to isolate Vietnam, but it also has the effect of isolating ourselves from firsthand information about that country."

Pressler followed up with a New York Times Op-Ed essay on May 23 calling for the restoration of normal diplomatic relations with Vietnam. It's almost ten years now since the last serious move in that direction. That effort by the Carter Administration came to grief when Vietnamese troops occupied Cambodia and drove out Pol Pot's Khmer Rouge in January 1979.

The Reagan Administration has obstinately refused to consider renewed ties until Hanoi withdraws its forces from Cambodia and gives a full accounting of Americans missing in action. Some of the Republicans who have joined Pressler's call for a diplomatic opening have the extra credibility of being bona fide war heroes—Arizona Senator John McCain, for example, a former Navy pilot who was shot down over North Vietnam in 1967 and spent five and a half years as a prisoner of war; and Pennsylvania Representative Thomas Ridge, whose hearing impairment was aggravated by the war. Their demands have been echoed by other influential Republicans like Senators Alan Simpson and Nancy Kassebaum.

McCain and Pressler had originally set March 17 as a date for introducing joint legislation to open an American "interests section" in Hanoi. However, in an interesting vignette of how Washington's thinking on Vietnam is determined, they opted to postpone the step because, as the Congressional Quarterly reported, "news of Nicaragua's incursion into Honduras the day before diminished the luster of any plan to improve relations with Vietnam." Hearings are expected to be scheduled this month.

The splashiest and most impassioned of the arguments for normalization, however, was an article by John Le Boutillier in the May 1 New York Times Magazine. Le Boutillier is president of a group called Account for P.O.W./M.I.A.s Inc., but he is probably better remembered for his flamboyant spell as a Republican Representative from Long Island between 1981 and 1983. In those days, he was known for displaying what the National Journal called "a contempt not just for Democrats, but for politics and government generally, a contempt typical of derisive preppies and of the careless rich of the North Shore of whom Scott Fitzgerald wrote."

So, is he a wiser man these days? Not really. On the face of it, much of what he writes seems sensible. The most striking memory that Le Boutillier took away from a March trip to Vietnam was the continuing wretched poverty of the place. "Indeed," he wrote, "Vietnam is so backwards that an American must wonder, 'How in the world did Vietnam ever win the war?'" To his credit, he drew the right conclusions: "The answer is simple: the North Vietnamese, despite their technical backwardness, would then, and would still, fight to the death to be independent of any outside domination—and the leaders in Washington were stupid, shortsighted and ignorant of the history and character of Southeast Asia."

From a conservative such as Le Boutillier, this has the character of a revelation around a core of heresy. He has, after all, built his reputation on keeping alive the M.I.A. fantasy. Back in 1977, the House Select Committee on Missing Persons in Southeast Asia, chaired by Republican Representative Sonny Montgomery, concluded that "no Americans are still being held alive as prisoners of war in Indochina" and that "a total accounting by the Indochinese governments is not possible and should not be expected." Activists like Le Boutillier, aided by a stream of Sylvester Stallone and Chuck Norris movies, have come to believe otherwise, and 82 percent of respondents, according to a recent Wirthlin poll, think American prisoners are still being held in Southeast Asia.

Pressler, McCain and their supporters are motivated by more hardheaded geopolitical concerns. But they would agree with Le Boutillier that stupidity, shortsightedness and ignorance are still at the core of U.S. policy, and they have decided to cut loose from the wreck of Reaganism before it drags them all down. The Administration's attitude toward Vietnam has never broken free of the neuroses of the past—that "sterile mixture of spite, bitterness and guilt," Le Boutillier calls it—whose only result is a policy that "has not been worthy of a superpower" and "is bad for the United States, bad for its allies and good only for the Soviet Union."

The Administration has reacted to this barrage with a kind of aggrieved consternation. One obdurate State Department officials insists, "Our policy has been to support and maintain the political isolation into which Vietnam's occupation of Cambodia has put it." Other Administration officials add that the current initiative from fellow Republicans "seriously complicates" U.S. policy in Vietnam. Pressler retorts that he is "very disappointed in the State Department for taking a very rigid line on this." And even McCain, a much more conservative figure (the successor to Barry Goldwater's Senate seat, in fact), is reluctant to blame Hanoi for the continued hostilities. "Perhaps that's Vietnam's fault, but it's hard to guage," he says. The idelogues of the far right, meanwhile, smell the blood in the water. Kenneth Conboy, Southweast Asia analyst at the Heritage Foundation, accuses Pressler of having "swallowed the bait they gave him" on his recent visit to Vietnam.

At the heart of the matter, as Le Boutillier, McCain and Pressler all recognize, in their own ways, is the extraordinary series of changes that have taken place inside Vietnam over the past year and a half. By 1985, a decade after the end of the war, Vietnam's economy was still in a ruinous state. Heaped on top of the devastation of the conflict and the failure to secure reconstruction aid from the United States was the daunting task of integrating the spartan, agrarian regime of the North with the more prosperous, decadent South—a dilemma Hanoi had tried to resolve by "breaking the machine" of Saigon.

The Sixth Communist Party Congress of December 1986 set in motion an economic rescue mission and a restoration of waning public trust in the party. Old warhorses like Premier Pham Van Dong and Politburo member Le Duc Tho, who negotiated the Paris peace accord with Henry Kissinger, were removed. The mantle of leadership passed to Nguyen Van Linh, the first leader in half a century not to be drawn from Uncle Ho's inner circle. It was a remarkable return to grace for Linh, who had been expelled from the Politburo in disgrace in 1982 for his advocacy of market reforms. Under the rubric of "renovation," Linh has championed the introduction of private enterprise; an end to corruption and bureaucracy; greater cultural and artistic debate, as exemplified by his own regular muckraking newspaper column, "Things That Must Be Done Immediately"; and a foreign investment code that is one of the most liberal in Asia. Vietnam (which in 1977 because the first socialist nation to join the International Monetary Fund) has asked me I.M.F. to stabilize its currency, the dong, and help it out of its "mess of exchange rates" (that's Nguyen Xuan Oanh again).

But the opening to the West is more than matter of economics: Ill-prepared U.S. officials have been sent scurrying to confront the possibility that this week's summit in Moscow could bring progress toward resolving the apparently endless conflict in Cambodia. Although Vietnam repeatedly insists that it is prepared to withdraw all its forces from Cambodia by 1990, Washington has shown no interest in talking. It has preferred to watch the Chinese-backed Khmer Rouge bleed Hanoi's army, waiting futilely for the Vietnamese—like the Nicaraguans, the Angolans and the Mozambicans—to cry uncle. They won't. Vietnam seems willing instead to turn over a new leaf in its relations with Washington and transcend the bitterness of the war. "Vietnam wants to forget the past," Linh says, "to forget that half a million American soliders wanted to return us to the stone age."

The Soviet Union, too, has indicated beyond reasonable doubt that it is ready to reconsider its role in Indochina. A settlement of the Cambodia conflict would remove the biggest obstacle to a rapprochement between Moscow and Beijing. At a press conference in Bangkok during his April tour of several Asian countries, Soviet Deputy Foreign Minister Igor Rogachev made it clear that the Soviet withdrawal from Afghanistan should be regarded as a model for resolving other regional conflicts. Cambodia was obviously uppermost in his mind.

The Russians also eagerly backed the two rounds of talks last winter between Prince Norodom Sihanouk and Hun Sen, Prime Minister of the Vietnamese-backed government in Phnom Penh, while senior Cambodian officials have alluded to an unprecedented political opening—even to the point of allowing Sihanouk to run in competitive elections. "If we lose in an election, it is our own fault," one member of the Cambodian central committee told The Christian Science Monitor. "We have made many mistakes, and it could be possible that we would end up in the opposition."

Most intriguing of all to U.S. conservatives is Soviet General Secretary Mikhail Gorbachev's remark in a 1986 speech in Vladivostok that "if the United States gave up its military presence, say, in the Philippines, we would not leave this step unanswered." In the Pacific region, the only possible reciprocity for the Clark Air Force and Subic Bay Navy bases would be the Soviet installations at Danang and Camranh Bay in Vietnam, which were established in the wake of the Vietnamese occupation of Cambodia. That geopolitical conundrum has now been made even more complicated by the Philippine government's unexpectedly tough new line on renegotiating the U.S. bases agreement, which expires in 1991.

It's this tantalizing hint of a Soviet disengagement from Southeast Asia that really has conservatives like Le Boutillier smacking their lips. While Washington picks over old resentments and refuses to see the Linh government as a portent of real change in Southeast Asia (which is basically the equivalent of reacting to Soviet policy in Afghanistan as if Leonid Brezhnev were still in the Kremlin), all the Republican proponents of normalization see Linh's program of renovation as a historic shift. "The new government in Hanoi," Le Boutillier writes, "leaves the strong impression that it is eager to pull away from Soviet dominance and even to help neutralize the ever-growing Soviet military presence in Southeast Asia." Vietnam thus becomes a target of opportunity, "a chance both to coax an important nation out of the Soviet orbit and to open up a large and rapidly growing market to Western free enterprise." Le Boutillier is one of a number of conservatives who see a new era

of U.S.-Soviet competition, "not on the battlefield but on the economic playing field; and American free enterprise will defeat Soviet military muscle any time." The goal here is the restoration of fading U.S. power, only by smarter means than the now-bankrupt illusionism and military adventures of the Reagan years. And the first step is to restore diplomatic relations with Hanoi.

There are, of course, myriad subtexts and ironies here. The simplest of them is the desire to register a U.S. economic recovery in Asia, to strike back before the Japanese, Taiwanese and South Korean businessmen in Oanh's Rolodex gobble up all the opportunities offered by Vietnam's new foreign investment law. Then there is a variant on the China illusion, the belief that political changes in the Asian Communist world are primarily of interest as symbolic rejections of Marxism (rather than reversions to Lenin's New Economic Policy, which Linh frequently invokes), and because they open up new markets for Western goods (a particulary delicious irony, this, when one recalls that the whole idea of the Vietnam War was to rescue the Vietnamese from the fiendish influence of Chinese Communism).

These illusions are easily disposed of. In a brisk, sensible Op-Ed piece in The Christian Science Monitor last December, Donald K. Emmerson of the University of Wisconsin's Center for Southeast Asian Studies ticked off the reasons: The raw materials and cheap labor offered by Vietnam are more readily available elsewhere; the quality of Vietnamese manufactured goods is too poor to compete among U.S. buyers; and Vietnamese incomes are too low to purchase U.S. goods. And in any event, whatever Vietnamese market may exist is peanuts in comparison with the markets that already exist in the capitalist countries of East and Southeast Asia, let alone the potential market of China.

The deepest and richest irony of all is that beneath the bold talk of entering new eras and shaking off the postwar hangover lies the same old fallacy, one that reaches all the way back to Ngo Dinh Diem and the mirage of the "third way." This is that an enlightened change in U.S. policy can give us leverage over Vietnam and reshape the country in our image. That's still why Vietnam is important to conservatives—because, as Le Boutillier wants to believe, it "could be the first American victory in this new superpower competition." Sweet, undying dreams.

The real argument for reopening diplomatic relations with Vietnam has nothing to do with markets or nostalgia or the reassertion of American power in the Pacific. It is much more simple: The Vietnam War is over; an independent nation named Vietnam exists, free of U.S. control, and is an important actor on the Southeast Asian scene. That is all, and it is sufficient.

It is an argument that should be easy enough for Democrats to make. But while voices on the right clamor for leadership on the issue of Vietnam, the silence on the Democratic side is deafening. It's not even as if there is a shortage of prominent candidates among the Democrats. There's New York Representative Stephen Solarz, for one, who made an unsuccessful trip to Vietnam in December 1984. "He felt they snubbed him," says one Washington analyst who follows the issue closely. "Since then he's been bitterly anti-Vietnamese, and he's had a powerful negative impact in the House." Then there are the Democrats' own Vietnam vets, like Senator John Kerry of Massachusetts and, oh yes, Senator Albert Gore, Jr. Both men were on the list of cosponsors of last year's resolution by Republican Senator Mark Hatfield of Oregon to open U.S. "technical offices" in Hanoi, but neither could be described as out front on the issue. Gore in particular could find worse ways of bouncing back from his debacle in the primaries and recovering some of his tarnished credibility within the party on an issue of substance and integrity. For the moment, however, the Democrats offer only a vacuum. And that means that a new brand of right-wing nostalgia, able to masquerade as conciliation and common sense, has the field to itself.

ADDITIONAL COSPONSORS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors to amendment No. 2379, the Statehood Centennial Commemorative Coin Act of 1989: Mr. MELCHER, Mr. ADAMS, Mr. BURDICK, Mr. CONRAD, Mr. DASCHLE, Mr. EVANS, Mr. MCCLURE, Mr. PRESSLER, Mr. SIMPSON, Mr. SYMMS, and Mr. WALLOP.

Mr. President, amendment 2379 was adopted to H.R. 3251, the bicentennial of the U.S. Congress commemorative coin bill, which passed the Senate on Tuesday, June 15.

This amendment directs the U.S. Mint to strike $5 Palladium coins in commemoration of the 100th anniversary of the statehood of Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming. The provisions of the amendment are almost identical to the provisions of a bill I introduced earlier, S. 2283, which was cosponsored by the 11 other Senators from the centennial States. However, I had made a modification which made it inappropriate for me to include my colleagues as cosponsors of the amendment without consulting with them. I now have had an opportunity to do so, and I ask that they be added at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. DIXON). I regret to advise that morning business time has concluded.

TENDER OFFER DISCLOSURE AND FAIRNESS ACT

The PRESIDING OFFICER. The Senate will now resume consideration of the unfinished business, S. 1323, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1323) to amend the Securities and Exchange Act of 1934 to provide to shareholders more effective and fuller disclosure and greater fairness with respect to accumulations of stock and the conduct of tender offer.

The Senate resumed consideration of the bill.

Pending:

Armstrong Amendment No. 2374, to provide restrictions on the use of golden parachutes and poison pill tactics, to amend the provision relating to greenmail, to require confidential proxy voting, which has been divided.

AMENDMENT NO. 2374 DIVISION I(A)

The PRESIDING OFFICER. There will now be 30 minutes' debate on the Armstrong amendment, division I(a), with the time to be equally divided and controlled.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum and ask unanimous consent, that the time be taken from both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, I think the yeas and nays have not been ordered. So I request them at this time.

The PRESIDING OFFICER. The yeas and nays, the Chair advises, have been ordered on division 1(a).

Mr. ARMSTRONG. Mr. President, I am wrong again. I may be wrong in what I am about to say next. I will say it anyway. I cannot imagine why any Senator would want to come to the floor and be recorded in favor of golden parachutes. That is exactly the issue we are going to vote on here in about 19 minutes. If you think, as I do, that there is some point at which these abuses ought to be stopped or at least made subject to a vote of the stockholders of these public corporations, then you will vote for the amendment sponsored by Senator METZENBAUM, Senator SHELBY, Senator GRAMM, and myself. If, on the other hand, you think we ought to go on ad infinitum with these golden parachutes, then I guess you vote against it.

I want to put it in this context. I am not against severance pay. Severance pay is a reasonable proposition. If it is the desire of any company to pay a week's pay to officers for every year they have worked there, or even a month's pay for every year they have worked for a corporation, that does not seem unreasonable to me. But when the severance pay arrangements are conditioned on a takeover, and when the amounts grow to be truly abusive, then I think at some stage somebody has to step in, for heaven's sake, and protect the stockholders. Our amendment does not really protect the stockholders. It gives the

stockholders a chance to protect themselves.

Mr. President, I want to make it perfectly clear that we are not discussing some kind of theoretical proposition. We are not talking about an abstraction, somebody's suspicion or concern of what might happen in the future. We are talking about a very real and prominent abuse that has already occurred.

I would like to read to you a list from Business Week magazine's 10 largest golden parachutes of 1987. I would invite Senators to consider whether or not this is the kind of business practice that we wish to condone. For example, the CEO of BA Investment Co., Thomas Kelley, according to Business Week, had a golden parachute worth $5.8 million; Paul Stern, who is president of Unisys, a golden parachute worth $6.8 million according to Business Week; Ernst Dourlet, president of Day International—I do not know that company. I do not know anything about its business affairs, the size of it, capitalization, sales, or its net profits. But I do know according to Business Week the president of that company has a golden parachute worth $9.1 million; Kenneth Gorman of Viacom, $9.5 million; and Howard Goldfeder, chairman, Federated, $9.9 million. An interesting side note in the case of Mr. Goldfeder, and I am not here to criticize these companies or these men as individuals. I am just telling you the facts as reported by Business Week. Mr. Goldfeder, I am advised, worked for this company for 37 years and was the chief executive officer of that company for 5 years. At that point he owned 3,000 shares of stock. His golden parachute was worth $9.9 million; Leonard Lieberman, Supermarkets General, $10.7; J. Tylee Wilson, RJR, $15 million; Richard Jacob, chairman, Day International, $16 million; Robert Fomon, chairman of E.F. Hutton, $16.6 million; and Terrence A. Elkes, chief executive officer, Viacom, took the prize in the Business Week golden parachute sweepstakes with a golden parachute valued at 25 million bucks.

Mr. President, I think that is abusive. But our amendment does not stop it. Our amendment says if you are going to have a golden parachute, as defined in the Internal Revenue Code previously defined in law in section 280 GB1 of the Internal Revenue Code of 1986, then you have to have an affirmative vote of the shareholders before such a golden parachute is put into place. My belief is that it would be a rare thing for shareholders to vote to approve such an arrangement, but if they wish to do so that is their business. It is the business of Congress to see to it that this kind of an abuse is not perpetuated at least without the permission of the shareholders.

So I hope everyone will vote for the amendment.

With that, Mr. President, I reserve the balance of my time.

Mr. ROTH addressed the Chair.

Mr. PROXMIRE. Mr. President, I yield to the distinguished Senator from Delaware 5 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 5 minutes.

Mr. ROTH. Mr. President, the pending amendment would outlaw "poison pill" and "golden parachute" defenses of corporate management against hostile takeovers. I oppose the amendment as unnecessary and unwise. I do not oppose the amendment because I seek to protect corporate management at all costs. Not at all. I stand in favor of free capital markets as much as the proponents of the amendment.

The truth of the matter is that it is already illegal for corporate management to adopt such defenses as these against the interest of the shareholders. The current law on this subject, State law, is also more finely tuned to the problem than is the one-size-fits-all approach of the pending amendment.

Mr. President, there is no need for the Federal Government to instruct the States on the law of fiduciary duties. Under State law, corporate management owes a fiduciary duty to the shareholders of the corporation. As the committee report documents, State law already precludes corporate managers from adopting defensive tactics solely or primarily to perpetuate themselves in office. Moreover, it appears that such defenses must be fair and reasonable both when adopted and when utilized.

On the other hand, State law also recognizes that defensive tactics may be part of a strategy to cause tender offerors to raise their prices and benefit shareholders. Therefore, State law, fully cognizant of the fiduciary responsibilities under scrutiny, judges the use of defensive tactics on a case-by-case basis. The pending amendment lacks such precision. Since it is an inferior solution when compared with current State law, it must be rejected.

Mr. President, I think it is worth reporting about what was said in the additional views of Senators DODD, CRANSTON, WIRTH, BOND, and KARNES. In their statement on management defensive tactics, they pointed out:

> We believe, as the majority report reflects, that state courts, and federal courts applying state law, are attempting to address abusive defensive practices adopted by management in efforts to thwart takeovers. Following the Unocal decision in 1985, many courts have held managements and boards of directors to a higher standard under the business judgment rule in change of control cases. We believe this is appropriate, given the potentially conflicting interests weighing upon even the most scrupulous managements and boards when confronted with change of control issues.
>
> Moreover, we believe, given the changing nature of takeovers and takeover defenses, it is appropriate to permit courts to address the propriety of defensive actions on a case-by-case basis. A poison pill or lock-up option may be appropriate and beneficial to shareholders in one case, buy damaging in another. Thus, we believed it was appropriate to strike prohibitions on specific defensive tactics from the bill and leave these matters to courts to resolve on a case-by-case basis. However, as in the area of state takeover laws, we believe this area merits continued monitoring by the Congress and the SEC.

Mr. President, I think that well states the case.

Even if the amendment were redrafted to reflect the wisdom of Judge Posner's comment that sometimes defensive tactics are good for shareholders, and sometimes they are bad, the amendment would then become redundant of State law and unnecessary.

In addition, the amendment is unwise. It violates fundamental concepts of federalism which have guided this country for 200 years. Under our system of divided powers between the States and the Federal Government, the subject of corporate governance has been allocated to the States. Now corporate governance was not allocated to the States only for so long as they acted in unison with the Senate. If federalism means anything, it means that we must defer to the States even when we disagree. It is easy to defer to the States when there is no difference of opinion. I am very distressed to see federalism's sunshine patriots proclaming a belief in States' rights, except when the States go too far in offending their notion of what is right.

If federalism means anything, and I particularly address those in this Chamber who normally espouse federalism, it means that we must defer to the States acting in their own sphere even when we might disagree. If federalism means that the States may act only so long as they please us, then the States are not sovereign. And federalism means nothing. With that attitude, each perceived mistake by the States will bring on Federal preemption so that ultimately the only function of the States will be to administer Federal programs.

Mr. President, this amendment should be rejected. It is inferior to current law. If perfected, it would be unnecessary. If necessary, it would be an unwise breach of federalist principles.

The PRESIDING OFFICER. Who yields time?

The Senator from Colorado is advised he has 3½ minutes.

Mr. ARMSTRONG. Mr. President, I would like to ask the forebearance of my colleagues. I believe the reason my time has been depleted is earlier some of it was yielded to a speaker on another subject. So with the indulgence

of my friend from Wisconsin, notwithstanding that I have only 3½ minutes, I would like to yield 5 minutes to my colleague from Alabama [Mr. SHELBY].

Mr. PROXMIRE. Mr. President, so we can have a vote at 10:30 as promised, I yield a minute and a half to the Senator.

The PRESIDING OFFICER. Without objection, the Senator is recognized for 5 minutes, one-half to be charged to the Senator from Wisconsin.

Mr. SHELBY. Mr. President, this morning we consider whether or not to permit one of the worst abuses of corporate assets.

A golden parachute is an appropriation of shareholder funds that goes to pay off former management. Pay off for what? For running the company so poorly it became the target of a hostile tender offer?

Consider CBS' treatment of its former chairman, Thomas Wyman. When the board of directors dropped Wyman in favor of Laurence Tisch, they did it softly. Wyman received a settlement of $400,000 a year, for life, as well as a lump sum of $4.3 million. Mr. President, is this fair?

I am not complaining because I seem to have chosen the wrong career. Nor do I seek to point out the discrepancy of laying off hundreds in order to cut costs while paying the former chairman this very generous settlement.

No. Mr. President, I do not question the decisions made by those in private enterprise. My only criticism stems from the fact that this settlement was approved by the board of directors, not the corporations' owners, the shareholders.

Mr. President, the golden parachute provided to the former head of CBS is not unique. In fact, it is a pittance compared to the parachutes some CEO's receive. In 1985, when Revlon was taken over by Pantry Pride, Revlon's CEO walked away with a severance package worth $35 million. Mr. President, whatever happened to the gold watch?

And $35 million for the CEO, after profits dived from $192 million to $125 million over a 5-year period. Once again, this golden parachute was approved by the board of directors, not the shareholders.

Golden parachutes have become an accepted executive benefit and they are getting bigger every year. Mr. President, I would like to compare some figures on the biggest golden parachutes, which were published in Business Week in 1986 and in 1988.

The 10 biggest parachutes in 1985, were: 35 million; 6.4 million; 4.27 million; 3.82 million; 3.82 million; 3.8 million; 3.7 million; 2.57 million; 2.32 million; 2.32 million.

In 1987, 25 million; 16.6 million; 16 million; 15 million; 10.7 million; 9.9 million; 9.5 million; 9.1 million; 6.8 million; 5.8 million.

Mr. President, I also ask unanimous consent that these tables be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE 10 BIGGEST GOLDEN PARACHUTES

[In thousands of dollars]

	Company	What led to payment	Total package [1]
1. Michel C. Bergerac, Chmn	Revlon	Pantry Pride takeover	35,000
2. William W. Granger Jr., CEO	Beatrice	leveraged buyout	6,400
3. David E. Lipson, CFO	...do	...do	4,270
4. Leonard H. Goldenson, Chmn	ABC	Capital Cities takeover	[2] 3,820
5. Frederick S. Pierce, Pres	ABC	...do	[2] 3,820
6. James L. Dutt, CEO	Beatrice	termination	3,800
7. John E. McConnaughty Jr., Chmn	Peabody International	Pullman takeover	[2] 3,700
8. Frank E. Grzelecki, Exec. V-P	Beatrice	leveraged buyout	[3] 2,570
9. Michael Sayres, Sr. V-P	Revlon	Pantry Pride takeover	[2] 2,320
10. Samuel I. Simmons, Sr. V-P	...do	...do	[2] 2,320

[1] Includes final salary, bonus, and long-term compensation collected—along with parachute payment.
[2] Granted in 1985 but exercised this year.
[3] Partially paid in 1985.
Data: Sibson & Co. and Business Week.

THE 10 LARGEST GOLDEN PARACHUTES

[In thousands of dollars]

	Company	Reason for payment	Total package [1]
1. Terrence A. Elkes, CEO	Viacom	Sumner Redstone takeover	25,000
2. Robert Fomon, Chmn	E.F. Hutton	Shearson merger	16,600
3. Richard J. Jacob, Chmn	Day Intl	M.A. Hanna merger	16,000
4. J. Tylee Wilson, CEO	RJR	Nabisco merger	15,000
5. Leonard Lieberman, CEO	Supermarkets Genl	leveraged buyout	10,700
6. Howard Goldfeder, Chmn	Federated	Robert Campeau takeover	9,900
7. Kenneth F. Gorman, Exec. V-P	Viacom	Sumner Redstone takeover	9,500
8. Ernest F. Dourlet, Pres	Day Intl	M.A. Hanna merger	9,100
9. Paul G. Stern, Pres	Unisys	Resignation	6,800
10. Thomas B. Kelley, CEO	BA Investment	Monarch Capital merger	5,800

[1] Includes final salary, bonus, long-term compensation, certain retirement benefits, and estimated future annuity payments as well as parachute.

Mr. SHELBY. Mr. President, although the single largest parachute was to the Revlon CEO in 1985, I believe these numbers indicate that parachutes are only getting larger. And I am willing to bet that all of these parachutes were approved by the board of directors and none by the shareholders.

Mr. President, yesterday the chairman of the Banking Committee, the distinguished Senator from Wisconsin, accused me of trying to kill a dead dog. He pointed out that the 1984 Tax Code imposed a significantly higher tax on golden parachutes. The distinguished Senator from Wisconsin suggested that this tax increase should be significant enough to reduce golden parachutes. However, these figures suggest that a tax increase is not enough. I said yesterday, golden parachutes are a maddog and the IRS is not big enough to kill it.

I do not want to see the Federal Government tell business how much to pay its executives. However, I would like to ensure that the shareholders are given an opportunity to approve or disapprove of a plan to give its ousted executives these multimillion goodbye packages.

This amendment would give shareholders that opportunity. It would prohibit golden parachutes unless approved by a majority shareholder vote. This is reasonable. It would permit shareholders to exercise their authority as owners of the corporations and

would put a check on one of the biggest abuses of corporate assets.

Mr. PROXMIRE. Mr. President, the Banking Committee during the markup on S. 1323, the Tender Offer Disclosure and Fairness Act, considered adopting a provision regulating the use of golden parachutes by corporations and decided not to do so.

While the committee understood that golden parachutes can be abused, it also recognized that boards of directors sometimes adopt them so that senior executives will stay with a company and completely devote themselves to a company's business during a change of control contest. With such agreements in place, manager's feel free to bargain hard for shareholders and against a bidder, even if it will later cost their jobs.

Since there were both good and bad points associated with the use of golden parachutes the committee chose to allow their use to be regulated by the States which charter corporations. State courts have struck down abusive golden parachute schemes when they have reviewed them under the so-called business judgment rule.

While I think the use of golden parachutes can be regulated by the States, I also recognize that it would not be a gross infringement on States rights and the State chartering of corporations to adopt some legislation regulating the use of golden parachutes.

The regulation of golden parachutes, unlike the regulation of shareholder rights plans, miscalled "poison pills" by the press, or the voting rules of corporations, does not strike at the heart of our system of allowing the States which charter corporations to regulate their activities. In fact, Congress has already established a precedent for a special Federal interest in regulation of golden parachutes when it decided to tax them at a special higher rate in the Internal Revenue Code. Senator ARMSTRONG even refers to that Tax Code provision in his amendment.

While I believe that the State court review of golden parachute provisions coupled with the Federal tax laws have already cured the worst abuses of this practice, I am prepared, under the circumstances, to vote for the Armstrong amendment because I do not think it will do any harm. I think golden parachutes have begun to disappear very rapidly because of the tax involved. The amendment will not ban the use of such compensation schemes outright, and as noted above does not set a precedent for the Federal regulation of internal corporate matters. For all of these reasons I will vote for this amendment.

Before I conclude, Mr. President, I wish to point out, in rebuttal to the Senator from Alabama and the Senator from Colorado, some of the golden ripoffs that have been made by people taking over corporations, compared to the corporation executives. These are just Wall Streeters, not people like Boone Pickens. The "Wall Street 100 Index" indicates how much they made last year: Jerome Kohlberg, at least $35 million; Leon Black, of Drexel Burnham Lambert, at least $12 million; Michael Milken, at least $60 million; Henry Kravis, at least $70 million.

These are people who made this money not for anything constructive and positive they did. In effect, they loaded corporations up with debt, put them in a very serious position, and cleaned up.

The article asks: "What do you do with an annual income approaching nine figures?" You could buy a fighter plane for $64 million, a Sea Hawk helicopter for $19 million, a $9 million diamond for the woman of your dreams, and you could pay $7 million to buy your own Bahamian island.

While I will support the Senator from Colorado on this amendment, I think that on other amendments which we should draw the line, because they go right to the heart of State governments and corporations.

Mr. President, I ask unanimous consent to have the article to which I referred printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Financial World, June 28, 1988]

STILL THE BEST GAME IN TOWN

(By Stephen Taub with David Carey, Tani Maher, Richard Meher, and Ruthanne Sutor)

Dapper, flamboyant and just 33, the founder and president of Tudor Investment, Paul Tudor Jones II, ranked as the most highly compensated Wall Streeter last year. In one lunch hour, Jones made more money—about $50,000—than roughly 94% of Americans make in a full year. He earned between $80 million and $100 million in 1987 by deftly trading $75 billion worth of financial and commodity futures. Jones edged out George Soros, whose hedge fund at one point last year was down $800 million from its high, but still posted a 13% gain for the year. For Soros, a $75 million income.

What do you do with an annual income approaching nine figures? More than the gross national product of two nations, the Maldives and Sao Tome and Principe? Well, Jones could purchase an F-14 fighter plane for $64 million, a Seahawk helicopter for $19 million, and still have enough money left over to buy the 85.51 carat diamond that recently went for over $9 million, for the woman of his dreams. And, if he gets bored with his 3,000-acre wildlife preserve on Chesapeake Bay, he could plunk down $7 million and buy his own Bahamian island.

For his next party, he could lease the QE2 and invite the entire Wall Street 100 clan to cruise around the world two times. Or, if he prefers something less ostentatious, he could hail a New York City cab and tool about the continent for over 11 years straight. But he can't buy all the tea in China. That would take well over $300 million.

Following closely behind Jones and Soros are Henry Kravis and George Roberts of the famed buyout firm Kohlberg Kravis Roberts & Co., who made a big killing when they brought E-11 public last year. In fact, four KKR principals made the top 20, earning a combined $200 million—more than either Reuters or USX made. Robert MacDonnell, Roberts' brother-in-law, took home at least $20 million. Jerome Kohlberg made at least $35 million, and that's not counting any income that came by launching his own firm with his son James. LBO rival Forstmann Little didn't do too badly itself. Theodore Forstmann, William Brian Little, Nicholas Forstmann and John Sprague together made between $70 million and $80 million.

Altogether, the 100 top compensated people grossed around $1.2 billion, or an average of about $12 million per person. But this doesn't include the 48 Goldman, Sachs partners who would have made the list. To prevent this exercise from becoming a Goldman, Sachs yearbook, we separated its partners from the pack, except for Chairman John Weinberg, and created another list just for them. Had Goldman's partners been included, the average compensation for the top 100 would have divided out to about $13 million a head.

And you thought the October massacre would finally restore Wall Street's compensation to more earthbound levels! Sure, after the crash, bonuses were mercilessly slashed at the big brokerage firms, thousands lost their jobs and speculators and FW 100 alumni George Kellner, Alan Slifka and Arnold Amster lost their shirts. Even Leon Levy and Jack Nash, the legendary Odyssey Partners who each made $20 million in 1986, suffered modest losses last year. Lazard Freres Chairman Michel David-Weill, FW's top earner in 1986, saw his compensation drop from about $125 million to about $54 million, still more than twice than Business Week just estimated it to be. But, from the looks of this year's list, no one is exactly heading for the poorhouse.

How does one make so much money in just one year? Some, like the partners at the LBO firms KKR, Forstman Little and Wesray, made their money by being at the vortex of the megadeals. Jones and Bruce Kovner guessed right in the futures pits, which proxy solicitor Donald Carter rode the coattails of merger mania. But all of these financiers have one thing in common. They share the profits with just a few people.

Jones, Soros and Tom Baldwin own their own firms, and the gang at KKR still keeps much of the profits for themselves, even though they have taken on quite a number of new partners in the past few years. Forstmann Little is basically a four-person operation. And although Wesray's 18 partners are more equal than they would be at another buyout firm, each deal has a new set of general and limited partners, depending upon who brought the deal in and who worked most heavily on it. Even Drexel Burnham Lambert's Michael Milken seems to own his own brokerage firm within Drexel, which is private itself and thus not subject to shareholder scrutiny.

Think big if you hire these men.

KKR and Fortsmann Little, for example, get about 1.5% of the money committed to their buyout pools. When they buy a company, they take an investment banking fee equal to about 1.5% of the price tag. Then, they keep 20% of all profits. Not too shabby.

Commodity fund managers generally get 6% fees and keep 15% of the profits. But, this fee structure is becoming more flexibile. For example, Paul Tudor Jones gets a 4% management fee and keeps 23% of all profits. Dinesh Desai doesn't charge a fee anymore, but he keeps one-third of all profits. And last year there were a lot of profits to keep. Most of the big winners sold out positions or went short in financial futures entering the crash and quickly went long shortly afterward.

The equity hedge-fund managers are not as smart. Although they keep 20% of the profits, they only charge 1% to 2% fees, if any at all. Soros was able to make a killing because over $600 million of his own money is tied up with his fund. Conventional money managers must work even harder. They only take management fees of 0.5% to 1% and don't keep any of the profits. Perhaps this explains why most of them have trouble beating the S&P.

This story is totally different at the brokerage firms. Generally, the best paid earn salaries of $150,000. The big bucks are in bonuses, which can exceed 10 times the base salary. The rule of thumb, though, is that an individual should be producing income for the firm equal to at least 15 times what he's paid. Only a couple of years ago, firms were satisfied if the multiple was only six.

Firms are also getting away from paying bonuses on a percentage basis across the board. Now, they slice up a bonus pool on a discretionary basis, based on who brought the deal, who were the keep assistants, who gave moral support along the way, etc. In other words, no contribution, no bonus. "Firms were living in a dream world before," says Gary Goldstein, managing director at the Whitney Group, an executive search firm. "They paid their people based on relative seniority and titles, not on what an individual was bringing in."

One reason why Lazard and Goldman pay so well is that they are partnerships which don't have thousands of anonymous shareholders to answer to. Meanwhile, Lazard's partners each year take out 90% of the partnership share. Since Goldman's business is more capital intensive—it commits piles of cash to trading, underwriting and has an army of expensive securities analysts—its partners only divvy up perhaps 8% to 10% of the partnership share. The rest of the compensation comes from appreciation of their stake in the partnership, which ranges as high as 5% to 10% for Chairman John Weinberg. Last year, the firm's capital swelled by 50%.

Morgan Stanley, whose earnings rose about 8% last year, publicly bragged about its success in its proxy by paying its five top officers about $3 million each. It's not a coincidence that Goldman and Morgan are regarded as two of the best-managed Wall Steet firms.

The best jobs? Still mergers and acquisitions. Although M&A activity wasn't nearly as intense as it has been so far this year, M&A was still a lucrative place to be, since the overhead is not high. "It's just people, no securities inventory," explains David Hart of the executive search firm Hadley Lockwood. "And fees appear to be going up."

Some people, however, did feel last October's crash, Neuberger & Berman would have had four or five of its people on our list, but big arbitrage losses during the crash cost the company about one-third of its capital, leaving the partners with a small pool to share.

For most other brokerage firms, in fact, 1987 will go down as the year the compensation party began to wane. "The jump from 1984 to 1985 was tremendous," confirms Goldstein. He says compensation for sales and trading peaked in 1985 and for mergers and acquisitions in 1986. "Without the crash, it would have been a much different year," confirms a top executive at a major brokerage firm. "It was a 10-month year." Even so, the biggest producers were paid comparably to 1986, he says. "There was more scrutiny at the marginal levels," he adds. "Everyone tried to protect the top performers."

In general, 1987 bonuses were slashed by 25% to 50% on average, according to the Whitney Group. Only the creme de la creme made big bucks, in other words, the kind of people found on our list. Top people at some firms, however, experienced major pay cuts. About 80% of Smith Barney's managing directors, for example, had skimpier paychecks, while Shearson Lehman Hutton levied cutbacks of between 25% and 50% in some areas. Drexel cut staff bonuses to 7.5% of pay from 35%, although it did go higher for big producers, presumably people like Milken. On the other hand, Merrill Lynch cut compensation across the board by about 10%, except for its senior investment bankers, many of whom saw 10% to 20% jumps in their bonuses last year. As a result, two of its rising stars, Jeffrey Berenson and Ray Minella, each earned about $3 million.

The worst paying jobs last year were in trading, where one-day stomach wrenching losses were common, whether in fixed income in the spring or equities during October. Arbitrage wasn't much fun after the crash either, as prices for pending takeover deals collapsed, along with the fortunes of the individual players, more than wiping out 10-month gains. As a result, no arbs made our list except for Donaldson Lufkin & Jenrette's Richard Isaacs, and the Hickey brothers, who are fixed-income arbs.

CEOs at the major firms didn't do as well either. Bear, Stearns's chairman, "Ace" Greenberg, took more than a 50% pay cut and will report in August's proxy that he made only $2.448 million, while Salomon's John Gutfreund made a point publicly of taking just $300,000 base salary and $800,000 in compensation deferred from 1984, a pittance compared to his $3.2 million compensation in 1986. At Merrill, Chairman and CEO William Schreyer and Chief Operating Officer Daniel Tully took 33% pay cuts.

The near future doesn't look any greener. Business uncertainty and widespread staff reductions have made most people in the industry insecure and unhappy, says headhunter Gail Sobel, vice president of Prescott & James. Take Shearson, which is still trying to absorb Hutton employees. "Except for [Chairman Peter] Cohen, anyone can be had at the firm," she says.

Compensation at the large firms will probably decline again this year, as a larger supply of out-of-work personnel chase fewer positions. Sure, firms such as Morgan Stanley, First Boston and Goldman are more willing to shell out the big sums to individuals employed in critical positions. But most others are cutting back in areas that are not cost effective, such as commercial paper, money markets, public finance and mortgage trading. "Firms are realizing that just because they produce commercial paper services for a client, it doesn't mean he'll use you for M&A," says Goldstein. As a result, whereas in the past headhunters would interview five people for a particular position, it's not uncommon to see upwards of 50 people traipse through their office now. "You always feel you can get someone for less money," says Sobel.

But, remember that this is a fickle, schizophrenic industry. If the markets heat up for four to six months, you can be sure brokerages will dangle big bucks again. Adds Sobel: "This is the way Wall Street has always been and will continue to be. It is still the best game in town."

THE WALL STREET 100 INDEX

[In millions of dollars]

	Amount
1. Paul Tudor Jones II, Tudor Investment	80 to 100.
2. George Soros, Soros Fund Mgmt	at least 75.
3. Henry Kravis, KKR	at least 70.
George Roberts, KKR	at least 70.
5. Michael Milken, Drexel Burnham Lambert	at least 60.
6. Michel David-Weill, Lazard Freres	54.
7. Jerome Kohlberg, KKR	at least 35.
8. John Weinberg, Goldman, Sachs	at least 32.
9. Donald Carter, Carter Organization	30 to 32.
10. Theodore Forstmann, Forstmann little	at least 30.
11. Raymond Chambers, Wesray	at least 28.
12. Reginald Lewis, TLC Group	at least 25.
13. Bruce Kovner, Union Financial	at least 24.
14. Richard Dennis, C&D Commodities	20 to 40.
15. William Brian Little, Forstmann Little	at least 20 to 25.
16. Robert MacDonnell, KKR	at least 20.
William Simon, Wesray	at least 20.
Malcolm Weiner, Millburn Partners	at least 20.
19. Nicholas Forstmann, Forstmann Little	at least 15 to 20.
20. Asher Edelman, Plaza Securities	15 to 20.
21. Lucian Baldwin III, Baldwin Commodities	over 15.
22. Morty Davis, D.H. Blair	15.
23. B. Gerald Cantor, Cantor Fitzgerald	12 to 15.
24. Leon Black, Drexel Burnham Lambert	at least 12.
25. Keith Gollust, Coniston Partners	11.
Paul Tierney, Coniston Partners	11.
27. David Dreman, Dreman Value Mgmt	10 to 14.
28. David Gottesman, First Manhattan	at least 10.
Howard Leach, Leach McMicking & Co	at least 10.
Harvey Sandler, Harvey Sandler Associates	at least 10.
31. Seth Glickenhaus, Glickenhaus & Co	at least 10.
32. Dean Le Baron, Batterymarch	10.
Michael Steinhardt, Steinhardt Partners	10.
34. Alfred Harrison, Alliance Capital Mgmt	8.9.
Dave Williams, Alliance Capital Mgmt	8.9.
36. Dinesh Desai, Desai & Co	8.
James Regan, Oakley Sutton Mgmt	8.
Edward Thorp, Oakley Sutton Mgmt	8.
39. James Gipson, Pacific Financial Research	7 to 11.
40. Robert Johnston, Beacon Hill Financial	over 7.
41. Augustus Oliver, Coniston Partners	7.
42. Charles Schwab, Charles Schwab	6.1
43. Steve Antebi, Bear, Stearns	at least 6.
Felix Rohatyn, Lazard Freres	at least 6.
Claude Rosenberg Jr., RCM Capital Mgmt	at least 6.
46. Edward C. Johnson III, FMR	5.6.
47. John Carifa, Alliance Capital Mgmt	5.4.
48. Leonard Heine, Management Asset	5 to 6.
49. Fred Adler, Adler & Shaykin	at least 5.
Richard Isaacs, Donaldson, Lufkin & Jenrette	at least 5.
Frank Richardson, Wesray	at least 5.
David Schafer, Schafer Capital	at least 5.
John Sprague, Forstmann Little	at least 5.
Frank Walsh, Wesray	at least 5.
Albert Zesiger, BEA Associates	at least 5.
56. Fayez Sarofim, Fayez Sarofim	5.
Leonard Shaykin, Adler & Shaykin	5.
Bruce Wasserstein, First Boston	5.
59. Scott Black, Delphi Mgmt	4.5.
Martin Zweig, Zweig Securities	4.5.
61. Frank Burr, Alliance Capital Mgmt	4.4
62. Joseph Feshbach, Feshbach Brothers	4 to 8.
Kurt Feshbach, Feshbach Brothers	4 to 8.
Matthew Feshbach, Feshbach Brothers	4 to 8.
65. John Geewax, Geewax, Turker & Co	4 to 7.
Bruce Turker, Geewax, Turker & Co	4 to 7.
67. Herbert Bachelor, Drexel Burnham Lambert	4 to 5.
Fred Joseph, Drexel Burnham Lambert	4 to 5.
69. Zalman C. Bernstein, Sanford C. Bernstein	at least 4.
70. Daniel Good, Shearson Lehman Hutton	4.
Joseph Perella, First Boston	4.
Martin Shafiroff, Shearson Lehman Hutton	4.
73. M. Joseph Hickey Jr., Hickey Capital Mgmt	3 to 7.
Robert Hickey, Hickey Capital Mgmt	3 to 7.
75. John Kissick, Drexel Burnham Lambert	3 to 5.
76. Peter Lynch, Fidelity Magellan	at least 3 to 4.
77. Arthur Pancoe, Bear, Stearns	3 to 4.
78. Martin Schwartz, private investor	3.1.
79. Edward Cerullo, Kidder, Peabody	at least 3.
Grenville Craig, Tiverton Trading	at least 3.
William Dunn, Dunn Commodities	at least 3.
Eric Gleacher, Morgan Stanley	at least 3.
John Henry, John W. Henry & Co	at least 3.
John Meriwether, Salomon Brothers	at least 3.
Damon Mezzacappa, Lazard Freres	at least 3.

THE WALL STREET 100 INDEX—Continued

[In millions of dollars]

	Amount
Louis Perlmutter, Lazard Freres	at least 3.
Ward Woods Jr., Lazard Freres	at least 3.
88. Jeffrey Berenson, Merrill Lynch	3.
Richard Fisher, Morgan Stanley	3.
S. Parker Gilbert, Morgan Stanley	3.
Robert Greenhill, Morgan Stanley	3.
Andrew Krieger, Bankers Trust	3.
Ray Minella, Merrill Lynch	3.
94. Lewis Bernard, Morgan Stanley	2.9.
John Mack, Morgan Stanley	2.9.
96. Lawrence Fink, First Boston	at least 2.5.
John Leland Jr., RCM Capital Mgmt	at least 2.5.
John Oppenheimer, JRO Associates	at least 2.5.
99. Howard Stein, Dreyfus	2.5.
100. Alan "Ace" Greenberg, Bear, Stearns	2.4

THE GOLDMAN 48

[In millions of dollars]

	Amount
Estimated compensation:	
John Weinberg	at least 32.
Donald Grant	14.4 to 16.
James Gorter	14.4 to 16.
Richard Menschel	14.4 to 16.
Eugene Mercy, Jr	14.4 to 16.
Robert Mnuchin	14.4 to 16.
George Ross	14.4 to 16.
Robert Rubin	14.4 to 16.
Eric Sheinberg	14.4 to 16.
Sidney Weinberg, Jr	14.4 to 16.
Geoffrey Boisi	9.6 to 12.7.
Kenneth Brody	9.6 to 12.7.
David Clapp	9.6 to 12.7.
Peter Coneway	9.6 to 12.7.
Robert Conway	9.6 to 12.7.
Daniel Cook III	9.6 to 12.7.
Leon Cooperman	9.6 to 12.7.
Robert Downey	9.6 to 12.7.
Lewis Eisenberg	9.6 to 12.7.
Robert Freeman	9.6 to 12.7.
Stephen Friedman	9.6 to 12.7.
Peter Sacerdote	9.6 to 12.7.
David Silfen	9.6 to 12.7.
William Stutt	9.6 to 12.7.
Barrie Wigmore	9.6 to 12.7.
Roy Zuckerberg	9.6 to 12.7.
J. Nelson Abanto	4 to 8.
Michael Armellino	4 to 8.
Claude Ballard	4 to 8.
Peter Barker	4 to 8.
Jon Corzine	4 to 8.
Eric Dobkin	4 to 8.
Peter Fahey	4 to 8.
Eugene Fiff	4 to 8.
Robert Friedman	4 to 8.
David George	4 to 8.
Richard Hayden	4 to 8.
Robert Hurst	4 to 8.
Howard Katz	4 to 8.
William Kealy	4 to 8.
Terence Mulvihill	4 to 8.
Willard Overlock, Jr	4 to 8.
Henry Paulson, Jr	4 to 8.
Peter Sachs	4 to 8.
Howard Silverstein	4 to 8.
Dennis Suskind	4 to 8.
Joseph Wender	4 to 8.
Mark Winkelman	4 to 8.

Mr. PROXMIRE. Mr. President, I am ready to yield back my time and vote.

Mr. ARMSTRONG. We are ready to vote.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum, because we did promise that the vote would not start until 10:30.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Mr. President, I rise in strong support of my colleague from Colorado who has rightly brought the issue of golden parachutes to the fore. His amendment is one which is straightforward and cleary protects shareholders by requiring that they be presented with information relevant to their investments, and which subsequently they may vote on.

I understand that an earlier draft of the bill we are now debating contained a provision which also addressed the issue of goldern parachutes, and I am disappointed that it was dropped in this version especially given the widespread deprecation of these tactics by Members of this body ever since 1983 when William Agee floated away from Bendix with generous severnace pay. Since then, probably the most incredible package was the $36 million parachute granted Michael Bergerac when Revlon succumbed to Pantry Pride. That was $36 million of shareholder money.

This bill should tackle the abuses of management in takeover situations, and as the ranking member of the committee pointed out in the report attendent on this bill, it fails to do so. I urge my collegues to support this amendment and, in so doing, help balance this bill with respect to the responsibilities incumbant upon management.

In my mind there is no doubt that golden parachutes are especially onerous because they are not subject to approval by shareholders. After all, the so-called "severance package" management receives as a result of a so-called hostile takeover comes out of the shareholder's pockets and, as many of my colleagues have pointed out already, these payments are in the millions of dollars. Under current law, all shareholders can do is initiate a civil action alleging a violation of the business judgment rule, a lengthy up-hill process which may not bring them their due.

In adopting this amendment, we will require that management submit to shareholders its plans to handsomely reward its top brass if they run their company so poorly that they become subject to a hostile takeover. Frankly, I cannot imagine why the shareholders would approve such a provision, but they should have the right to make that decision. In order to make clear which shareholders would be given the right to reject golden parachutes if this amendment becomes law, I ask unanimous consent to insert an article in the RECORD which cites a Mercer-Meidinger-Hansen study of the issue. It contains some eye-opening facts.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the L.A. Times, Sept. 28, 1987]

GOLDEN PARACHUTES—DESPITE CRITICISM, THE LUCRATIVE SEVERANCE PAYMENTS HAVE TAKEN HOLD IN CALIFORNIA'S CORPORATE HIERARCHY

(By Bill Sing)

Raymond F. O'Brien probably can't complain too much about his pay. The chairman and chief executive of Consolidated Freightways, a Palo Alto-based transportation company, earned just under $1 million for his labors in 1986.

And if the company is taken over and O'Brien loses his high-paying job, he shouldn't feel too bad either. The company has agreed to give O'Brien a lump-sum severance payment—otherwise known as a "golden parachute"—worth $3.72 million in the event of a change in control.

O'Brien's golden parachute is among the largest enjoyed by California executives, but it is far from unique. Although they have been harshly criticized by many shareholders and employee groups as elitist and needlessly lucrative, golden parachutes for top executives can be found at about four of every 10 major California companies, according to a survey conducted for The Times by the compensation and employee-benefits consulting firm of William M. Mercer-Meidinger-Hansen.

Mercer-Meidinger-Hansen's review of the proxy statements of 239 public companies statewide found that in some industries, such as entertainment and financial services, more than half of the companies surveyed provided golden parachutes.

"The proliferation of golden parachutes is the direct result of the merger mania of recent years," said Michael O. McCullough, a Mercer-Meidinger-Hansen associate and director of the survey. Golden parachutes, he said, were virtually non-existent four years ago. Despite continuing criticism of the severance payments, they continue to grow and have become so commonplace that many executives expect them as a condition of employment, McCullough said.

Executives with parachutes constitute a who's who of California's corporate elite. Turnaround artist Sanford C. Sigoloff of Wickes Cos. has one, as does movie mogul Alan Ladd Jr. of MGM/UA Communications Co. Other parachute-clad local executives include National Medical Enterprises Chairman Richard K. Eamer, Fluor Corp. Chairman David S. Tappan Jr., Lockheed Chairman Lawrence O. Kitchen, Caesars World Chairman Henry Gluck, Glenfed Chairman Raymond D. Edwards and H. F. Ahmanson & Co. Chairman Richard H. Deihl.

The Gap Inc. President Millard S. Drexler, California's highest-paid executive last year with total compensation of $7.7 million, also has a parachute. Half of the state's 10 highest-paid executives, as ranked in The Times' 1986 survey of California executive pay, are covered by the controversial plans.

Golden parachutes—legally defined as severance packages for executives that take effect under a change in control—vary widely between companies, the Mercer-Meidenger-Hansen survey shows. Many plans offer a lump-sum payment equal to a multiple of the executive's current salary. But some offer only one year of base pay while others offer as much as five times base, even though some of the higher amounts may be considered excessive by the Internal Revenue Service and may subject the recipient to

a penalty tax, Mercer-Meidinger-Hansen's McCullough said.

Many parachutes also offer other benefits, such as accelerated vesting in pension plans and stock options.

Some executives get parachutes even if they don't lose their jobs under a change in control. Some get them even if a suitor acquires as little as 10% of the company's voting stock. Parachutes at Walt Disney Co. and Pacific Scientific Co. even provide for reimbursement of legal fees—in case the executive sues an acquiring company if it won't honor the golden parachute.

In a growing number of cases, parachutes are extended to entire management teams, not just the chairman or chief executive. Companies with these "group" parachutes include Litton Industries, Henley Group, Advanced Micro Devices, Great American First Savings Bank, Times Mirror, Genetech, First Interstate Bancorp, Farmers Group and Whittaker Corp.

A number of companies around the country—among them Mobil, American West, Diamond Shamrock and Herman Miller Inc.—offer so-called tin parachutes that provide benefits for all employees, non-management as well as management. Because companies are not required to disclose these tin parachute arrangements, Mercer-Meidinger-Hansen could not determine which California companeis have them.

Some companies, such as Occidental Petroleum, Walt Disney Co. and Gibraltar Financial Corp., exclude their chief executives but include other senior executives. At least one California company, Amfac Inc., extends parachutes to its directors.

Of course, many firms eschew parachutes. Some executives clearly don't need them. Columbia Savings & Loan Assn. Chief Executive Thomas Spiegel, fifth on The Times' list of highest-earning California executives in 1986 with total compensation of $3.86 million, does not have a parachute. Why should he? He, his family and other company insiders control more than half of Columbia's stock, making a hostile takeover highly unlikely.

Other firms, such as Avery International, provide parachutes but require that some of the executives receiving them actively seek new employment to receive payments.

The overwhelming majority of firms with parachutes, however, don't require that executives seek new jobs. Some, in fact, may continue to make parachute payments even after the executive finds a new job.

These and other parachute benefits continue to arouse critics, among them shareholders, employees and some corporate executives.

"In the last couple of years, it appears everybody has installed golden parachutes for the benefit of [managements] but not for the benefit of shareholders," said Thomas E. Flanigan, chief investment officer for the California State Teachers Retirement System, one of the nation's largest pension funds and a shareholder of many firms with parachutes.

When allowed a shareholder vote on the plans, the fund has turned thumbs down in every case in the past two years, said Janice M. Hester, the fund's corporate affairs adviser.

Parachutes are unfair, critics say, because ordinary workers on the shop floor often lose their jobs in takeovers with little or no severance pay. Top executives already are overpaid, these critics contend.

Furthermore, parachutes protect incumbent managements and reward mediocrity, critics say. Companies likely to be takeover targets often are poorly managed, they contend. Able managers who do get displaced in takeovers can find new jobs quickly since there is demand for executives with proven track records, critics argue.

"If you believe in free enterprise and competition, then managements should be competing . . . to make their stock price so high that nobody can take them over," said Joseph F. Alibrandi, chairman and chief executive of Los Angeles-based Whittaker and a leading corporate critic of parachutes. "Stockholders shouldn't be required to make sure that managements that haven't performed can [earn high severance payments] before finding another job."

Whittaker does have a parachute plan, but it is a group plan that only provides for employees to be credited an additional five years in the company's pension plan. Alibrandi says he and other senior executives refuse to participate in any plan that would grant lump-sum payments.

PROPONENTS STATE CASE

Parachute proponents counter that the payments have become a necessity for corporations to recruit top managment, particularly in industries with high merger and takeover activity.

It typically takes between six months and two years for top executives to find new jobs, said Gilbert E. Dwyer, president of a New York executive recruiting and counseling firm bearing his name. Executives' demands for parachutes as a condition of taking a new job are met by companies in about two-thirds of cases, said Dwyer, a proponent of parachutes.

More important, Dwyer added, parachutes protect shareholder interests because executives with parachutes will worry less about losing their jobs in takeovers and instead will concentrate on getting the best deal for shareholders, instead of for themselves.

The Mercer-Meidinger-Hansen survey indeed shows that companies in industries with a high-level or merger activity (such as banking) or frequent management changes (such as entertainment) offer parachutes more frequently.

Four of the seven (57.1%) entertainment companies surveyed had parachute arrangements. Of financial institutions, including banks, savings and loans and insurance firms, 64% had parachutes.

The parachute propensity of banks and S&Ls can also be attributed to anticipation of the liberalization of California's interstate banking laws in 1991, when many out-of-state banks may acquire California banks, suggested Randall W. Hill, who specializes in placement of financial-services executives for the executive search firm of Spencer Stuart.

"Golden parachutes are a defensive mechanism," Hill said. "In such an uncertain time for financial institutions today, they've got to offer them."

But some parachutes can be unfurled at even the slightest hint of a change of control. Financial Corp. of Santa Barbara, Valley Federal Savings & Loan Assn. and Great American First Savings Bank will activate parachutes for certain key executives even if an outside suitor acquires only 10% of voting shares. By contrast, Wrather Corp. requires a suitor to have 80% before its parachutes are opened.

Executives at Wickes and Consolidated Freightways will get parachutes if the company ceases to be publicly held. Executives at several companies, including San Diego Gas & Electric, Zenith National Insurance Corp., Westamerica Bancorp., Henley Group and Varian Associates, will open parachutes if the company sells certain assets, possibly even if no change of control occurs.

CooperVision and Far West Financial Corp., grant parachutes to executives even if they don't lose their jobs in a takeover. "You don't even have to jump off the plane" to get golden parachutes at these firms, said William F. Spear, technical professional at Mercer-Meidinger-Hansen.

Some firms, such as Brae Corp. and Zenith National Insurance, include consulting arrangements in parachutes. One of the most lucrative is that enjoyed by Merv Adelson, chairman and chief executive of Lorimar Telepictures. His parachute calls for him to serve as a consultant for five years after termination at half his full-time pay. His cash compensation in 1986 was $553,383.

Van Nuys-based Superior Industries International provides some added protection for its parachutes for three senior executives. Their lump-sum payment is assured because it is backed by a letter of credit, Mercer-Meidinger-Hansen's McCullough said.

Who's got the biggest parachute of them all? No one knows for sure, McCullough said, because only about 40 firms surveyed quantified the value of their parachute agreements or provided enough information about base pay, stock options, pension plans and other items to allow an independent determination.

Some companies obscure the agreements, McCullough said, noting that parachutes are mentioned in any of a number of spots in proxy statements.

But while exact dollar values are hard to determine, some plans appear quite lucrative.

Cooper Vision is among the more generous on base pay, awarding three senior executives five times their base salary. Great Western Financial Chairman James F. Montgomery and President John F. Maher would receive compensation and other benefits as if they had remained fully employed for five years.

Another generous firm is Walt Disney Co., which offers a variety of pay and benefits to Richard A. Nunis, president of three company theme park subsidiaries. Nunis' package includes a portion of base salary and payments based on bonuses, stock options and pensions. Nunis' parachute also includes reimbursement of legal fees and expenses.

Among those that do quantify parachutes, the award for the biggest goes to O'Brien of Consolidated Freightways. His $3.72-million plan is followed by Lockheed President Robert A. Fuhrman at $3.22 million, National Education Chief Executive David H. Bright at $2.72 million and Lockheed Executive Vice President Vincent N. Marafino at $2.63 million.

But singling out these executives as having the biggest parachutes would be unfair because others with more lucrative arrangements may not have disclosed their values, McCullough notes. The ones who disclose "are really the good guys," he said.

This amendment builds upon the provisions we adopted in the Tax Reform Act of 1986 which, as the distinguished chairman of the Banking Committee has noted, dramatically taxes golden parachutes at a higher rate than other kinds of income. In my mind, this provision was a step in the

right direction toward curtailing the use of golden parachutes, and the amendment before us is another important such step.

I cannot see why anyone would oppose this provision, especially at a time when the issues of plant closings are so hotly disputed. Surely no one would agree that we should allow managers to write their own reward packages when they do not want to adopt plant closings provisions that will protect employees who are not nearly so well compensated and probably face great personal difficulties as a result of job loss.

I thank my colleague for offering this amendment.

Mr. SPECTER. Mr. President, I am voting in favor of the Armstrong amendment which would prohibit the payment of so-called golden parachutes to corporate management who are ousted as a result of corporate takeovers. These corporate managers often take with them from the corporate coffers excessive severance payments.

The problem of excessive golden parachutes is not new. In 1984, Congress changed the tax laws to discourage excessive golden parachute severance agreements. Although well intentioned, these provisions worked poorly, with many corporate managers pegging their parachute payments to skirt the tax penalty.

To address this golden loophole, section 3 of my bill S. 634 would lower the 300-percent threshold on golden parachutes to 200 percent of an executive's average annual compensation and would increase the excise tax penalty from 20 to 50 percent.

While the Armstrong amendment does not lower the 1984 threshold or increase the tax penalty, it does increase the accountability of corporate management to shareholders. Under this amendment, any golden parachute arrangement would be prohibited unless approved by shareholders within 2 years. By bringing the glare of public scrutiny to bear on these golden parachute arrangements, the Armstrong amendment would help to restore public confidence in corporate management. By invalidating golden parachute agreements unless approved by the shareholders within 2 years, the Armstrong amendment would put an end to this inappropriate practice.

The PRESIDING OFFICER. The question occurs on division I(a) of the amendment offered by the Senator from Colorado.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN], is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 193 Leg.]

YEAS—98

Adams	Glenn	Moynihan
Armstrong	Gore	Murkowski
Baucus	Graham	Nickles
Bentsen	Gramm	Nunn
Bingaman	Grassley	Packwood
Bond	Harkin	Pell
Boren	Hatch	Pressler
Boschwitz	Hatfield	Proxmire
Bradley	Hecht	Pryor
Breaux	Heflin	Quayle
Bumpers	Heinz	Reid
Burdick	Helms	Riegle
Byrd	Hollings	Rockefeller
Chafee	Humphrey	Rudman
Chiles	Inouye	Sanford
Cochran	Johnston	Sarbanes
Cohen	Karnes	Sasser
Conrad	Kassebaum	Shelby
Cranston	Kasten	Simon
D'Amato	Kennedy	Simpson
Danforth	Kerry	Specter
Daschle	Lautenberg	Stafford
DeConcini	Leahy	Stennis
Dixon	Levin	Stevens
Dodd	Lugar	Symms
Dole	Matsunaga	Thurmond
Domenici	McCain	Trible
Durenberger	McClure	Wallop
Evans	McConnell	Warner
Exon	Melcher	Weicker
Ford	Metzenbaum	Wilson
Fowler	Mikulski	Wirth
Garn	Mitchell	

NAYS—1

Roth

NOT VOTING—1

Biden

So division I(a) of the amendment (No. 2374) was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which division I(a) of the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ARMSTRONG. Mr. President, is the Senate in order?

The PRESIDING OFFICER. The Senate is not in order. Will the Senate please be in order?

The Senator from Colorado.

DIVISION I(b)

Mr. ARMSTRONG. Mr. President, I am grateful to all Senators for their approval of the antigolden parachutes amendment. If I understand the parliamentary situation, the next division of the amendment to be presented is the antipoison pill provision. It is the same concept, same issue, same arguments pro and con, it seems to me. I presume and hope that the vote will be the same or very nearly the same.

Let me just take a moment, however, to explain, for those who have not been following carefully, exactly what a poison pill is. A poison pill, Mr. President, is one of about four different types of antitakeover devices that companies have employed against so-called hostile takeovers.

Mr. METZENBAUM. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator from Ohio is correct. There is not order in the Senate. Senators are visiting on various other issues on the floor. May we have order here, please, and attention for the Senator from Colorado?

The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I was going to take just a moment to explain four common types of anti-takeover devices, some of which are abusive.

The first is the so-called supermajority amendment, to lock in the operations or the assets of a corporation. The second is what is termed a fair price amendment. A third is what they call classified boards, that is where you have staggered terms for the board of directors so the new owners of corporations could not elect a majority of the board of directors, even though they controlled a majority of the stock. The fourth and in many ways the most insidious, most destructive, truly the most abusive of all, is the poison pill. That is a special form of stock issue in which, upon a takeover, that is where 50 percent or more of the shares of the company change hands, there is triggered an issue of preferred stock, the effect of which is dilute the ownership by all other stock.

In other words, if the directors of a company are sitting around the board room someday and see on the horizon the possibility that somebody might come along and want to buy from the owners of the shares a majority of the shares of the company, they simply conspire among themselves to say: If that happens, then we will trigger a diluting stock issue, an issue of stock that might be out at prices much less than the actual pro rata basis on which corporate shares could be valued. Maybe at only 75 percent of the value. Maybe at only half the value. Maybe in a way which would be so destructive that it would literally collapse the market for the stock.

Mr. President, golden parachutes are reprehensible but poison pills are absolutely the death knell for any corporation that suffers the execution of a poison pill strategy. It is unfair. It is abusive. It violates the rights of all shareholders, not just acquiring shareholders but truly of all shareholders.

So, Mr. President, for all of the same reasons that we have approved an antigolden parachute amendment I hope and believe that the Senate will approve an antipoison pill amendment.

Let me make one thing clear and then I will be happy to yield because I know others wish to speak on this. Even though I personally disapprove a poison pill under any circumstances, at least I cannot think of any circum-

stances under which I would personally think a poison pill was equitable or fair or just or well advised or meritorious, our amendment, the amendment offered by the Senator from Ohio [Mr. METZENBAUM], the Senator from Texas [Mr. GRAMM], and the Senator from Alabama [Mr. SHELBY], and I, does not flatly preclude the use of poison pills. It says if the management of a corporation is foolish enough to want to adopt such a measure of this type, it must submit the issue to a vote of the stockholders. And it must be approved by the stockholders before it becomes effective.

So even in this amendment, though I myself can see no justification for poison pills, we do not take the ultimate step of outlawing them. We just say that the shareholders, the ones that are subject to be disadvantaged, ought to have a chance to vote on the issue.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I am a principal cosponsor of this amendment which, in my opinion, would take away one of management's favorite antitakeover devices: the adoption of a poison pill.

Let's face it, there are situations in which takeovers are hurtful, there are situations in which they are helpful. But that is not the issue before us.

The issue before us has to do with whether or not corporate management has the authority to put in place a poison pill, that is, the issuance of a security at a bargain price or with special voting rights contingent on transfer of corporate control, and redeemable at a premium. In other words, if somebody is going to take the corporation over, they are going to get this poison pill that greatly increases the cost of the takeover and effectively negates or impinges upon the equal voting rights that all shareholders should have. By swallowing this expensive poison pill, management, of course, hopes it will defer bidders from even trying to take over the company.

Now, the committee bill contains no restrictions on poison pills, despite the fact that over 400 companies have adopted them as a takeover defense, without shareholder approval. And, as I said yesterday, I commend the committee for the bill that it has brought to the floor. But I think we just have to go somewhat further to deal with some of these issues, the first one of which was voted on a few minutes ago; the second one of which is before us in this antipoison bill provision.

Management says they swallow poison pills simply to protect shareholder investment. I do not buy that. I do not buy that at all. They swallow poison pills for the purpose of protecting themselves with little regard to the impact upon the shareholders, the employees, or the community, time and time again, you see management rushing to a poison pill not to protect the shareholders—they could care less about the shareholders; not to protect the community, they are not concerned about it—but to protect themselves.

Their argument is hard to believe, given the increasing number of court decisions throwing out poison pills as primarily a device for protecting entrenched management at shareholders' expense. This ought to be known as the shareholders' rights amendment because it has to do with the right of all shareholders to participate in the decision as to whether or not you are going to issue a security at a special price, or with special voting rights, if somebody comes in to take over the company.

But even if the assertion of management were true, our position is that the shareholders have a right to decide whether a poison pill defense is best for them and best for their investment. We must not leave the decision just to management, which has an inherent conflict of interest in preserving its own position.

Some say that increasing court decisions invalidating poison pills make a Federal poison pill restriction unnecessary. I could not disagree more. Litigation is expensive, unnecessary, and usually arises only after an actual tender offer is made. Litigation to determine the validity of the poison pill is very expensive, indeed.

With this legislation you avoid that court expense and you give the shareholders a right to decide whether they agree or disagree with the management. Going the litigation route does not protect the shareholders against abusive poison pills which are swallowed in anticipation of tender offers which are never made because of the company's poison pill defense.

When a tender offer is made, quite often the shareholders really become the beneficiaries. The stock is selling at $40 and somebody is willing to pay $60 or $70. That is hardly a heinous crime, hardly an egregious act. But the management steps in when they see that developing, or think it may develop, and put in place this poison pill which makes it almost impossible for somebody to come in and make such an offer. And if they do, in order to knock out the poison pill, they must get involved in lengthy and expensive litigation. That is not the way it should be.

We should look to the shareholders of this country as those who have put their money up in defense of the free enterprise system. They want a share of that free enterprise system. And if somebody comes along and says that they want to pay $60 or $70 for their share of that system, even though the stock is only selling at $40, there should not be any artificial impediment standing in the way of permitting them to pay $60 or $70 and permitting the shareholders to get the benefit. But poison pills do just that. They stand in the way of shareholders getting a full return on their investment.

The courts alone cannot stop abuse of the poison pill defense. Nor can shareholders, who are at a natural disadvantage in any attempt to vote down a poison pill plan. Only Congress can effectively restrict harmful poison pills.

This amendment does that by prohibiting poison pills unless they are approved by a majority of shareholders or authorized by an SEC exemption. This amendment protects shareholders, and I urge the Senate to approve it.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Wisconsin, the chairman of the committee.

Mr. PROXMIRE. Mr. President, I strongly and flatly oppose the amendment offered by the distinguished Senator from Colorado. The issue is not poison pills; it is not corporate takeovers. It is who is to regulate corporations.

If this amendment is adopted, we can forget about 200 years of productive history in which States—the State of Georgia, the State of Wisconsin, the State of Ohio, the State of Colorado—have regulated corporations.

Senator ARMSTRONG proposes to adopt a Federal law that will make it more difficult for corporate boards of directors to look out for the interest of their shareholders during a takeover contest. Boards of directors either prior to or during abusive two-tier tender offers will adopt shareholders rights plans to defend the interests of shareholders from corporate raiders.

An example of a shareholders rights plan was that adopted by the board of the Revlon Co. which provided Revlon shareholders with a right to exchange Revlon stock for a Revlon note valued at a price considerably higher than the market value of the stock. Senator ARMSTRONG would call such a shareholders rights plan a poison pill and make it more difficult for boards to adopt such plans. The State court which reviewed the Revlon plan, however, found that the Revlon board had protected the shareholders from a hostile takeover at a price considerably below the company's intrinsic value. That is what they are. Such plans often ensure that shareholders get more for the stock during a hostile takeover.

This example illustrates why it makes no sense to adopt a Federal law restricting companies in adopting shareholders rights plans. Senator ARMSTRONG urges us to do so by calling

such plans poison pills. That is a marvelous name. Who can be in favor of a poison pill? Management and stockholders have considered this to be a shareholder's rights plan. To regulate shareholders rights would in essence be a gross infringement, as I said, on the traditional role of States in chartering corporations and reviewing their fiduciary obligations to shareholders. States have done this for many years. They are proud of it. They have done it well. The amendment is designed to favor raiders over corporate management.

The Banking Committee at first considered banning "shareholders rights plans" itself but on studying the issue it realized that it is State corporate law that governs the relationship among corporate officers, directors and shareholders, and thus establishes the fiduciary duties, obligations, and liabilities of the board of directors in managing the internal affairs of a corporation.

The board of directors of a corporation is not entitled to behave irresponsibly for they have a fiduciary duty to their shareholders. In that regard, their decisions are subject to review by the courts under the so-called business judgment rule. Under this rule the courts will reverse decisions by a corporate board if the board acts in bad faith or abuses its discretion.

In recent years courts have been increasingly vigilant in scrutinizing decisions by boards of directors that have antitakeover implications and have overturned "shareholder rights plans; defenses that were adopted to entrench management. At the same time the courts have upheld "shareholder rights plans" defenses adopted by management to defend companies and its shareholders against two-tier tender offers and other abusive takeover tactics.

Mr. President, the SEC itself opposes Federal regulation of shareholder rights plans defenses. They oppose this. Chairman Ruder recently stated that "State courts will entertain legal challenges to the adoption of such plans * * * and have invalidated plans found to be adopted without authority under state law or in violation of State fiduciary obligations." Chairman Ruder emphasized that investor concerns raised by shareholders rights plans are being addressed under State corporate law.

Management adoption of shareholders rights plans defenses cannot only protect shareholders from unwanted takeovers, but studies have shown such defenses enable companies to win substantially higher takeover premiums than companies without pills. Let me give an example.

A recent study by Georgeson & Co., Inc., of takeovers that occurred between January 1, 1986, and October 19, 1987, determined that companies protected by shareholder rights plans received takeover premiums that were 69 percent higher than the premiums received by companies without such plans.

So the stockholders have benefited from this. The stockholders have benefited, and the courts stand there to judge these to make sure they are not discriminatory and unfair for the people who would take over a corporation.

At any rate, the Georgeson study found this resulted in the transfer of an additional $3.9 billion to the shareholders of the projected companies.

Mr. President, the Congress should permit States to continue to regulate the internal working of the corporations they charter. We should not start down the road of federalizing our corporate law. Throughout our history we have found that the States are closer to and can respond quickly to deal with the changing needs of the corporations they charter and the needs of the shareholders of these corporations.

It makes no sense to have the Federal Government step into this area and forbid corporate boards from "acting quickly to defend shareholders where quick action is needed."

Once again, I want to reiterate what I said at the beginning. This amendment, if adopted, is the first step toward a complete Federal regulation of corporations. It will end a 200-year history. We have letters from the Governors, letters from the attorneys general of various States, letters from all the organizations representing the States opposed to this kind of action that has been proposed by the distinguished Senator from Colorado.

Mr. President, I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise to join my colleague and distinguished chairman of the Banking Committee in opposition to this amendment.

I think it is very important at the outset to understand that the amendment represents a radical departure from the traditional balance between the Federal and State role in corporate governance. It is important to separate out the position one might take on the substance of the issue, and on the State role in corporate governance. You can make a case for shareholder protection, shareholders' rights plans and there are arguments that can be made against them. It is a very complicated issue and, in many instances, as the distinguished chairman has said, a shareholders' rights plan has very clearly been used to the advantage of the shareholders of a particular corporation. They have been important in fighting off an abusive takeover. They have been important in eliminating the inequities that are associated with a partial or two-tier tender offer where someone seeks to acquire a company and does acquire initial stock moving toward a controlling position at a higher price and then comes in with a lower price to the disadvantage of the remaining shareholders. Their shareholders' rights plans serve as a protection in those instances.

But in addition to how you reach a judgment on the substance, the fact of the matter is that these issues have been left traditionally, under our system, to be decided by State law.

State law currently prescribes when shareholders must approve corporate action. For most corporate actions, including the adoption of shareholders' rights plans, State law authorizes directors to act on behalf of the shareholders and, at the same time it does that, it imposes on directors a fiduciary duty to protect and promote the shareholders' interest.

The directors do not have carte blanche to act as they may choose. They have to act consistent with the fiduciary duty which is placed upon them to protect and promote the shareholders' interests. This responsibility of the directors is reviewed by the courts on a case-by-case basis and, in fact, they will invalidate those instances in which the fiduciary duty may have been breached.

The fact remains that we have left this important matter of corporate governance to be determined under State law. This provision would eliminate that, and it would move the Federal Government into an area which heretofore we have left to State control.

Second, I simply want to point out on the substance that the requirement of shareholder approval, which is contained in this bill, although the sponsor says he cannot envision any instance in which he thinks it would be warranted to even have such a shareholder rights plan—and I disagree with that—I think there have been instances on the record in which shareholders' rights plans have been effectively used to the advantage of the shareholders and constitute an important protective device.

In any event, the requirement of prior shareholder approval, in effect, would mean that you could not have such plans. The effort to put in place a plan ahead of time designed to address a specific situation would probably not be possible because you could not anticipate every situation.

The effort to address a specific situation when it arose probably could not be done in a timely fashion because it would take time to determine what type, if any, of a shareholders' rights plan is an appropriate response to a

particular takeover threat. It would take time to prepare the necessary disclosure documents, to call a shareholders' meeting, and obtain the approval—meanwhile the 35 days provided in this bill in which a takeover can proceed, would run out.

Now, these defenses, the shareholder rights plans, have been used in a number of instances in order to protect against abusive takeovers. The courts have upheld those when they have been questioned, the question being did the directors abide by their fiduciary duty. There have been court cases in which the courts have in effect found that the directors were actually protecting the shareholders, in one instance from a hostile takeover below the price of the company's intrinsic value while retaining sufficient flexibility to address any proposal deemed to be in the shareholders' best interests. The adoption of the rights plan was within the protection of the business judgment rule and in the circumstances the plan was adopted in good faith after reasonable investigation.

We looked into this matter in the Banking Committee in the course of these extended hearings to which I referred yesterday, and we realized after a careful examination of the shareholders' rights plans which had been used that it is a very complicated and complex issue, that it is State corporate law that governs the relationship among corporate officers, directors, and shareholders. It is the State law to which we have looked in the past to determine this relationship between the officers, the directors, and the shareholders, and it is to this law that we have looked for the fiduciary duties, obligations, and liabilities of the board of directors in managing the internal affairs of a corporation. So there is an existing body of law which applies to these issues. The courts have been interpreting that over the years. The board of directors are not entitled, I emphasize not entitled, to behave irresponsibly. They have to act according to their fiduciary duty to the shareholders, and that behavior is reviewable by the courts. The courts will in fact reverse behavior which they find an abuse of the so-called business judgment rule. So there is a balance that is now in place in the operation of the corporate governance system, which it seems to me enables a proper weighing of the arguments in the particular case.

This amendment eliminates all of that. It takes an issue which has traditionally been handled at the State level, in effect raises it to the Federal level, seeks to impose a Federal rule on corporate governance, and eliminates the ability for a case-by-case determination which exists under State law. The courts in the States have looked again and again at the decisions of boards of directors when they take action with respect to takeover efforts. They in fact have reversed them in instances in which it was found that they were designed simply to protect an entrenched management. On the other hand, they have upheld these plans in those instances in which it was found that management adopted them in order to defend the companies and their shareholders against two-tier tender offers and other abusive takeover tactics.

Now, the chairman of the committee made reference to the position of the chairman of the Securities and Exchange Commission, who has indicated his opposition to Federal regulation of shareholder rights plans. He stated that:

> State courts will entertain legal challenges to the adoption of such plans and have invalidated plans found to be adopted without authority under State law or in violation of State fiduciary obligations.

He goes on to note:

> Investor concerns raised by poison pills are being addressed under State corporate law.

Mr. President, I submit that the Congress should continue to permit the States to regulate the internal workings of the corporations they charter, that there are arguments for and against shareholder rights plans. A good deal of one's judgment about them depends on the specific circumstances of the case, the nature of the takeover effort, and the nature of the shareholders' rights plan adopted to counter the takeover effort. There are documented instances in which these shareholders' rights plans have clearly worked to the advantage of the company and to the advantage of the shareholders. I submit that this matter should remain in the area of State decisionmaking.

There is a fundamental threshold which this amendment is seeking to cross, and that is into matters of corporate governance which have been traditionally left to the States. Particularly in those instances in which there is an argument for them against the substance of what is proposed to be done, the difficult judgments about shareholder protections and the fiduciary responsibilities of corporate directors are best left to State legislatures and State courts to make, which is the arena in which they have been made traditionally. It is clear that in some instances shareholders' rights plans in fact serve a useful purpose in assuring fair treatment for shareholders, for instance, in the case of two-tier tender offers where an acquirer buys up a controlling share of a company at a high price and then pays the rest of the shareholders a low price.

Clearly, in those instances the courts have in fact examined shareholders' rights plans designed to address that very situation and have upheld them as being reasonable, as meeting the fiduciary duties of the directors to the shareholders and as representing a proper exercise of the business judgment rule.

Mr. President, I urge the Senate to reject this amendment and to permit the States to continue to regulate the internal workings of the corporations which they charter, which has been the traditional approach in this country.

Mr. President, I yield the floor.

Mr. ARMSTRONG address the Chair.

The PRESIDING OFFICER. The Senator from Colorado, [Mr. ARMSTRONG].

Mr. ARMSTRONG. Mr. President, the reddest red herring we have seen in this Chamber in a long time is the notion that there is a states-rights issue contained in the Armstrong-Metzenbaum-Shelby-Gramm amendment. There is not any such thing. It is exactly the same issue as we voted on a few moments ago in golden parachutes. We are not telling corporations how to run their business. We are saying with respect to those corporations in interstate commerce—we are not talking about any corporations that are not in interstate commerce, but with respect to those that are in interstate commerce, and as a practical matter, we are talking with those that have hundreds, even thousands, of shareholders scattered all over the country. But with respect to those corporations, we are saying that they should not have golden parachutes.

The logical extension of that, if it is not an undue burden on the States, if it is not an unreasonable interference in States' rights for us to outlaw the golden parachute practice, is surely it is not an unreasonable extension of that principle to say that the even more egregious, the more dangerous, the most costly, the more divisive, the more destructive poison pills can equally be addressed by the Congress.

Honestly, to argue that is a States' rights issue, it seems to me, is pretty far-fetched, but I am a respecter of States' rights. I am a person who believes—and I mentioned this yesterday—that for the most part, we ought to leave to the States those matters which are properly within their jurisdiction, those things which are closest to home, and where they are the most responsive to local citizens.

That is not the case when you are talking about great national corporations. These corporations may be headquartered in New York, they might be headquartered in Delaware, they may have a home office in Wisconsin, Colorado, or Alabama. But the fact of the matter is their shareholders are everywhere.

Under the circumstances, it seems to me when you get down to basic issues

of protecting the rights of shareholders—in this case, all we are talking about is their right to vote before a poison pill plan, a plan that would dilute the ownership and in many cases actually destroy the corporation—before such a plan is adopted, they ought to have a chance to vote. Somebody may think that is a big burden on States' rights. I do not believe it.

Mr. PROXMIRE. Will the Senator yield on that point?

Mr. ARMSTRONG. Yes; I am happy to yield to my friend from Wisconsin.

Mr. PROXMIRE. I am surprised my good friend from Colorado is arguing that because the corporations are in interstate commerce there should be no limit on the governance by the Congress. The fact is that virtually every corporation in this country, every corporation that is listed on the New York Stock Exchange, every corporation that is held broadly by the public, is in interstate commerce. All of them are chartered in States. The States treasure that chartering, and they have done an excellent job through the years.

So, the fact that a corporation has stockholders in all 48 States or all 50 States, the fact is that a corporation may have its headquarters in one place, many of its operations elsewhere, is really irrelevant. It is where the State is chartered that determines the kind of governance that we have.

If the Senator is going to take the position that whatever corporation in interstate commerce should be regulated by the Congress of the United States, we are a Federal body after all, regulated by Federal regulatory institutions like the SEC which, incidentally, says they think the States should govern in this case, there is no question in my mind that the Senator is taking a radical position which is certainly opposed to the interpretation that States have. That is why they have written us and told us that they are very much opposed to having the Federal Government move in on their territory in instances such as this and they specifically cite the shareholders rights plans.

Mr. ARMSTRONG. Mr. President, if I were to advance the proposition that the Senator from Wisconisn has mentioned he would have every reason to be surprised, but I do not suggest for a minute that the mere fact that a corporation operates in interstate commerce or has multistate shareholders means there should be no limit on the actions of Congress in regulating the corporations.

For the most part corporate governance is wisely left to the States. But the practical situation we face is this: that a corporation which is headquartered in one State and is governed in the main by the laws of that State begin to have a different set of responsibilities when it sells the share of the corporations to people in other States and particularly when a circumstance arises where the rights of the shareholders in another State are seriously compromised, where they are seriously abused. I think that is the case with these poison pills and golden parachutes.

Mr. PROXMIRE. If they are abused, you have State courts to step in and act under those circumstances. They do. We have a fine record, as the Senator from Maryland documented so well, of moving in and acting and protecting the interests of all concerned, including those who would acquire the corporation.

Mr. ARMSTRONG. Mr. President, this is a matter about which reasonable men can disagree. But the point I was addressing, and I want to move to the substance of the issue in a moment, at the outset is the threshold issue of States rights. We have been regulating this kind of question for a long time. It does not seem to me, others may disagree, that this is any new departure. Certainly it is no new departure from the amendment which we have just adopted by a nearly unanimous vote. It is the same essential principle.

Mr. SARBANES. Will the Senator yield on that point?

Mr. ARMSTRONG. Yes.

Mr. SARBANES. I submit to the Senator that there is a very sharp difference.

Mr. ARMSTRONG. Mr. President, I am unable to hear the Senator. I beg the Senator's pardon.

The PRESIDING OFFICER. The Senate will be in order.

Mr. SARBANES. I will submit there is a very sharp distinction between the golden parachute amendment and this one. The golden parachute amendment does not go to the heart of the corporate governance question. This amendment does. This question goes to the very heart of the State law developed by State legislatures in State courts with respect to the relationship of officers, directors, and shareholders. And the fiduciary duty is an obligation and a liability. We have State laws, which are examined in the courts on a case-by-case basis, and in some instances courts, have upheld shareholder rights plans as a proper action by the board of directors which defended the interests of the shareholders and in other instances has turned them down for abuse of the directors discretion exercising the fiduciary judgment.

I appreciate that the Senator comes from a point of view that none of these shareholder rights plans—I think the language he uses is that he could not envision a situation in which he thought a shareholder rights plan would be desirable or appropriate or proper. But he is going to allow for that to happen in any event by the prior shareholders' approval. But he could not himself envision such a situation. The fact of the matter is that many people do envision such a situation on the substance, that that particular judgment has been called into question in the courts, and in a great number of instances, the courts have upheld those shareholder rights plans as in fact protecting the company and the shareholders.

The Senator comes from a point of view that rejects that possibility. That is not where many others come from. That is certainly not what the courts have found. Given the fact, on the basis of that record, my judgment at least is that this is a matter in which it is arguable, clearly arguable in each instance whether the shareholders rights plan serves a broader purpose and function that it ought to be left to the State law which is the existing system that we have. We ought not to cross that threshold of moving the Federal Government in to deny the States' role and in a very important matter of corporate governance.

Mr. ARMSTRONG. Mr. President, I do not want to bog down on the States' rights question because I think practically all Senators will have already formed a judgment of as to whether this is a States' rights issue.

I am convinced it is a red herring; I am convinced that the situation is exactly analogous to the vote we just had. I am convinced myself that it is really farfetched to say when we regulate often in minute detail the activities of corporations for matters which seem to me at least to be far less consequential, for matters which seem to me at least to be far less involved with basic human rights, because that is what we are talking about here—it seems to me then in that circumstance pretty farfetched to argue the States' rights question. Senators are entitled to do it and entitled to weigh that argument accordingly, and I suppose that they will do so.

I did say I could not personally imagine any circumstances under which a particular kind of business arrangement would be justified. I did not characterize those as shareholders rights provisions. I characterized them as poison pills.

I can imagine a lot of different kinds of arrangements relating to the capital structure, the issuance of common and preferred stock, debentures, options, warrants, preferences, buy-backs, repo's, reverse repo's, and every other kind of imaginable financial arrangement that might be appropriate under some circumstances.

The specific kind of arrangement which I personally cannot imagine approving, if I were a shareholder, a manager of a corporation, is the kind of abusive arrangements which I de-

scribed in some detail earlier, and which are commonly known as poison pills. If one begins to understand what those really are, that is to say those capital arrangements where stock is issued automatically diluting the ownership often by a large fraction, by an order of magnitude or two, unfairly, and when that happens, only when there is a transfer of stock to some third party, other than the original issuer, then you have a ripoff. It is a poison pill, and I cannot imagine why a bunch of shareholders would want to get together and agree to such a notion. If they want to, that is their business; but it seems to me that it is the business of Congress to protect innocent shareholders who would not agree to such a thing, very possibly, that it be shoved down their throats.

The Office of the Chief Economist of the Securities and Exchange Commission released a study in July 1985 of the economics of various so-called antitakeover devices in 649 firms between 1979 and 1985. The report states, in part:

Briefly, the stock returns data show an average loss of 1.31 percent for the entire sample. Separating the amendments by type, however, reveals that fair price amendments have very little effect on stock value, while the supermajority, authorized preferred, and classified board amendments have substantial negative effects on stock value.

We find that the most harmful amendments are proposed by firms that have relatively high insider and low institutional stockholdings.

Investor Responsibility Research Institute Study concludes that the actual behavior of takeover targets protected by these amendments is generally contrary to the shareholder'sinterest.

Mr. President, I will put that in the context of some specifics, because I do not believe we should approach this primarily from the standpoint of abstraction or some broad-gauged philosophy. I want to talk about what happened.

The Investor Responsibility Research Institute has done an extensive study of this matter, the adoption of poison pills, and so has the United Shareholders Organization. The SEC studied 30 companies with poison pills, and they looked specifically at 15 such companies which defeated takeover bids.

In the following 6 months—that is, in the 6 months following the defeat of takeover offers by companies which had previously adopted a poison pill arrangement—the average decline in the value of stock was 17 percent.

Gearhart Industries declined by 70 percent after a pill defeated a takeover; Tesoro Petroleum declined 48 percent in a similar circumstance; CTS declined by 31.73 percent; Mayflower Group, 30 percent; HBO, 54.44 percent; Gillette, 30 percent.

The point is that this is not a theoretical problem. This is what is happening in the real world.

Mr. President, I want to yield the floor, because I see the Senator from Alabama is here, and I would like to hear his thoughts on this matter, because he is a champion of the rights of shareholders.

I hope that no Senator, however they wish to vote on this amendment, will be misled or confused by the argument about States' rights. It is analogous to what we have just done. It is analogous to existing State law.

The question is, if management wishes to adopt a poison pill, which has the potential of destroying a company, should shareholders have a chance to vote? If you think they should at least have a chance to vote, Senators should vote for the Armstrong-Metzenbaum-Shelby-Gramm amendment.

Mr. SHELBY. Mr. President, this poison pill we talk about is another manipulative tactic of management. I do not know how you could characterize it otherwise.

The adoption of this amendment would make it unlawful for a company to establish a poison pill and would require that poison pills previously adopted be submitted to the shareholders for a vote within 4 years. The SEC has determined that poison pills reduce stock prices and are not in the best interest of shareholders.

The Delaware Supreme Court rules that corporations may install poison pills without seeking shareholder approval. Thus corporate management can adopt a plan that would make a hostile takeover prohibitively expensive, thus providing for their own job security, at the expense of the shareholder.

An article in the New York Times, describes poison pills as:

Devices adopted by corporations—without shareholder consent—that erect insurmountable barriers to offers from outside bidders for a company's shares—except those favored by management. They affect the economic well-being of everyone with a pension plan, mutual fund, or stock investment.

Certainly, Mr. President, this is most of America that is affected by these poison pills. Management will argue that poison pills are necessary to protect against takeover attempts and thus provide for the long-term growth of the company. However, a study provided by the investor responsibility research center found that companies do not increase their risk of takeover by committing to long-term projects.

At this time, more than one quarter of the Fortune 500 have adopted a poison pill without shareholder consent. These poison pills purport to give shareholders the right to buy more stock at a lower price during a hostile takeover attempt. In reality, costs become prohibitively expensive for bidders unless the purchase is sanctioned by the company's board. This gives the board exclusive right to decide when and if a takeover can proceed.

Mr. President, corporate America is owned by shareholders, not corporate management. We should adopt this amendment to make sure that the shareholders are permitted to exercise the control that is commensurate with their risk. Shareholders should not be made pawns to be moved by the will of the management.

This amendment would prohibit one of the worst abuses of shareholder rights. I urge my colleagues to support it.

Mr. President, I ask unanimous consent to have printed in the RECORD an article which was published in the New York Times.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Dec. 14, 1986]

RECIPE FOR A MANAGEMENT AUTOCRACY

(By Peter C. Clafman and Richard M. Schlefer)

Poison pills are bad medicine for American shareholders. Nevertheless, they are well on their way to becoming a fixture in business. To prevent that disastrous step, many institutional money managers are now fighting poison pills, in Washington and in corporate boardrooms.

Poison pills are devices adopted by corporations—without shareholder consent—that erect insurmountable barriers to offers from outside bidders for a company's shares—except those favored by management. They affect the economic well-being of everyone with a pension plan, mutual fund or stock investment.

Poison pills give shareholders the apparent right to purchase discounted shares in the face of a hostile acquisition. In fact, however, shareholders are virtually never permitted to exercise these "rights." In reality, poison pills impose prohibitive costs on bidders unless redeemed by the company's board, thus giving the board exclusive authority to decide if an acquisition can proceed.

Poison pills are undesirable for two reasons: They deprive shareholders of the right to decide whether to sell their stock and, thus, to decide who controls the company; and they deter offers that might benefit shareholders, reducing the value of the stock. It is not surprising, then, that management prefers not to seek shareholder consent for a pill.

Why are some corporate managements unwilling to put their arguments to a vote by shareholders? There is no reason except the fear that shareholders will reject the dubious "protections" and "rights" that their managements champion.

Poison pills require a bidder to satisfy the company's management rather than its shareholders. They replace shareholder democracy with management autocracy. As recently stated by a Court of Appeals in invalidating a poison pill, such a measure "effectively precludes a hostile takeover, and thus allows management to take the shareholders hostage. To buy (the company), you

must buy out its management." Defensive tactics such as poison pills, said the court, often leave shareholders "defenseless against their own management."

How harmful are poison pills? The Securities and Exchange Commission's Office of the Chief Economist examined all 245 poison pills adopted from 1983 through July 4, 1986, and found that share prices, on average, declined relative to the market at the time of the announcement of a poison pill's adoption. The study further concludes that shareholders in companies that have fended off takeover attempts with the help of a poison pill have fared poorly, in contrast to those in companies that were taken over despite their poison pills.

Of course, no study can document how many bids at higher prices were never made because of a poison pill. Prospective bidders are far less willing to undertake the effort and expense of mounting a bid in the face of what the S.E.C. has described as the "lethal" effects of the pill.

In arguing for poison pills, managers often claim to be upholding the long-term interests of the corporation against institutional shareholders with supposed short-term investment horizons. This is a smokescreen. Rather than meeting the positive argument for corporate democracy, the proponents of poison pills seek to discredit the institutional investors.

Most pension funds and other institutional investors necessarily have long-term objectives in keeping with their long-term investment responsibilities. There is no evidence that pension funds are forcing companies to abandon long-term projects for short-term profitability. On the contrary, a study published in January by the impartial investor Responsibility Research Center concluded that companies do not increase their risk of takeover by committing to long-term projects. Another study by the center shows lower institutional ownership in takeover targets than in corporations generally.

Clearly, institutional ownership does not promote takeover attempts; the more confidence institutions have in an incumbent management, the higher the institutional ownership. Therefore, if a corporation faces a hostile takeover, that is not the fault of institutional investors.

Rather than resort to poison pills, managers should take positive steps before outside pressures arise. First, they should take a strong stand against the practice of paying greenmail—buying back the shares of a corporate raider at a price above the market. Companies in mature industries—the most common takeover targets—should consider selling unproductive assets and raising dividends to increase the price of the company's stock rather than making expensive acquisitions in areas in which they have no expertise. In evaluating their exposure to takeovers, managements should heed not only their lawyers and investment bankers but their shareholders, whose evaluation—reflected in the price of the company's stock—is too often ignored.

The stakes for shareholders are high. The poison pill has been detrimental to the economic interests of shareholders and it fundamentally distorts corporate democracy. An issue so critical to shareholders should be finally decided by shareholders, since they are the ones who bear the ultimate risk of a company's success or failure.

Mr. SHELBY. Mr. President, I want to read an excerpt from this article, which talks about poison pills. It was published in the New York Times on December 14, 1986, with the caption "Recipe For a Management Autocracy."

Poison pills are undesirable for two reasons: They deprive shareholders of the right to decide whether to sell their stock and, thus, to decide who controls the company; and they deter offers that might benefit shareholders, reducing the value of the stock. It is not surprising, then, that management prefers not to seek shareholder consent for a pill.

Why are some corporate managments unwilling to put their arguments to a vote by shareholders? There is no reason except the fear that shareholders will reject the dubious "protections" and "rights" that their managements champion.

Poison pills require a bidder to satisfy the company's management rather than its shareholders.

Mr. RIEGLE. Mr. President, I know that others wish to speak, so I will abbreviate my remarks.

It is very important that we defeat this amendment. It is a fundamental question of States rights versus Federal rights.

We know, for example, that on defensive tactics corporations may undertake in their own behalf those matters that are principally handled at the State level. What we are trying to do with our legislation here is to deal with a tender offer process in a very carefully directed and targeted way. We are not trying to disrupt the overall pattern of the law in this area in a more sweeping way.

I think that proposal before us at this time is very disruptive, because it does, in a sense, set aside major, long-standing divisions of responsibility between the Federal Government on the one hand and States on the other.

Now, in terms of the inherent inequities of hostile takeover attempts, that is not a black and white issue. There are times when takeovers are fully warranted and you have a management that clearly is deficient. There are a lot of other instances where it cuts exactly the other way—where you have companies that are well managed but undervalued at a particular point in time—and corporate raiders can come in and strip out assets by one tactic or another, sometimes by use of a tactic to try to extract greenmail, and in other instances, by trying to sell back a block of shares at a higher price.

What we are trying to do with this legislation is to empower shareholders so that they have more information and they have it sooner. We want to ensure that there is time for alternative bidders and buying options to be developed so that in the end shareholders have the opportunity to achieve the greatest amount of value for their holdings.

Anything that cuts against that, anything that has the effect of taking and hurrying the process too much, of retarding the ability for alternative bids to be brought forward, in effect ends up denying shareholders the ability to achieve full value.

There are a lot of examples to that effect. In one case, the board of Chemlawn adopted a carefully tailored shareholder rights plan that allowed it to negotiate a deal for a much higher figure, $36.50 a share versus $27 a share.

In another case, a shareholders' rights plan was upheld by a Federal court judge which allowed Federated Department Stores to block an initial offer by Campeau and which put Federated shareholders in a position where the bidder was forced to raise its bid by 50 percent.

There are any number of instances where the way the law generally sets today enables shareholders, through the efforts of existing management, to receive full value and higher value than otherwise might be the case.

When a person invests in a company, he or she expects the directors to act in the best interests of the shareholders and the company, and that is what fiduciary responsibility is all about. That is why we have boards of directors in the first place.

The problem raiders have with the current system is not that it fails to serve the interests of shareholders. The problem they have is that it does in fact serve the interests and rights of shareholders.

When the Securities and Exchange Commission was asked if Federal regulation was needed in this area, the chairman said it was not. This decision was based on the fact that judicial review of these matters has been very intense.

So, Federal regulation of takeover defenses, I think, is unwise and unnecessary and would be an unwarranted intrusion into corporate governance matters, which are properly and sufficiently regulated by the States under our pattern of law.

Finally, let me just quote a little bit of the chairman of the SEC in his testimony before the House on this very subject, where he said that to act in this manner * * *

Would limit issuers' ability to adopt poison pill plans by curtailing their ability to grant rights that would either entitle the holder to purchase securities of the issuer or any other corporation at less than their market value, or require the issuer to repurchase its securities at greater than market value, without shareholder approval.

Historically, the activities of bidders (third party or issuers) have been regulated primarily by federal law under the Williams Act,

which is really what we are here to deal with today, I may say parenthetically. Continuing to quote Chairman Ruder:

The response of the target company generally has been governed by state statutory

and common law, unless the target engages in its own tender offer.

While the Commission shares Congressional concerns regarding the potential for abuse in target company responses, it believes that the regulation of matters * * * to prevent a change in corporate control, are appropriately matters of corporate governance under state law.

And I stress that and say it again, "are appropriately matters of corporate governance under State law."

Finally, the Chairman says,

If a board of directors fails to fulfill its obligations to shareholders, appropriate remedies are available under state doctrines of corporate waste and breach of fiduciary duty, including the duties of care and loyalty.

So the Commission has come forth very forcefully in opposition to this amendment.

I would just conclude by saying this amendment, if it were to be adopted, damages this underlying legislation in very important ways, and if we are going to improve the tender offer process, it is very important that this amendment be defeated at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, we have had a good strong debate on this amendment. I think it is pretty clear where people stand.

So, I move to table the amendment and I ask for the yeas and nays.

Mr. ARMSTRONG. Mr. President, will the Senator withhold that briefly?

Mr. PROXMIRE. I withhold briefly, yes.

Mr. ARMSTRONG. I thank the Senator.

If I may address the Senate briefly, there is a group of people whose opinion has not yet been expressed. I would like to just express it on their behalf.

I do not know how many Senators are acquainted with Paul F. Quirk, but he is the executive director of the Massachusetts Pension Reserve Investment Board. It is $2.2 billion fund vested in public pension assets. He states, and I quote:

As Executive Director of the Massachusetts Pension Reserves Investment Management (PRIM) Board which manages $2.2 billion in public pension assets, I have some serious reservations about the strength of that proposed legislation, referring to S. 1323.

He mentions several concerns that he feels about it.

He says:

I urge you to consider amending S. 1323 before a vote is taken on this critically important legislation.

One of the specific things he mentioned and now I quote again:

There are other weaknesses in the proposed legislation including the allowance of "poison pills" and "greenmail".

He goes on to suggest that an amendment would be in order.

In my own State there is an organization called the Public Employees Retirement Association of Colorado, an outfit that I have been generally familiar with for over 20 years. It is a model of responsible pension fund management by public employees. They have written to me on June 2 a letter expressing a number of concerns, and one of them again I quote is poison pills and parachutes. "S. 1323," writes PERA, "approved by the Banking Committee contains no steps to prohibit or restrict these practices which entrench and enrich corporate management. Poison pills and golden parachutes should be prohibited unless adopted by a majority of shareholders."

Mr. President, this view is held not only in Massachusetts and Colorado, but it is also a view that is highly prominent in the State of California on the letterhead of the State Association of Retirement Board Members. I have here a letter from Ed Fleming. Mr. Fleming is secretary-treasurer of the Conta Costa County Employees Retirement Fund. He is only speaking for himself but he points out that he is a fiduciary and an officer of this board. And he advocates a number of quite specific reforms to S. 1323 and one of them and I quote is "address those corporate schemes which discriminate against shareholder rights. Golden parachutes and poison pills should be banned outright."

The police and firemen, a pension association of Colorado, has written a similar letter expressing the same concerns, and then I have an interesting letter from a gentleman in Florida. I found it particularly a worthy letter because in an age in an era when so many people have sort of lost the gift of forceful self expression, Mr. R.E. Whiteside comes through with refreshing candor and vigor and succinctness and power. I am not going to read his whole letter, but I would like to read a few sentences of it. He says:

I am one of your Florida constituents and find that you will be instrumental in deciding if we small shareholders will continue to get one vote for each share of common stock we hold in big business or whether the big corporations and their officers will further destroy our rights to vote direction they take in deciding our investment's fate.

Here is the relevant portion of Mr. Whiteside's letter. He said:

The stink of Wall Street with the poison pills, the insider trading, the broker's greed and deceit, officers of companies' feathering their own "nest", golden parachutes, manipulation of markets * * * and I could go on * * * all point to the moral breakdown of American capitalism.

In that I would disagree slightly with Mr. Whiteside. I do not think there is a moral breakdown of American capitalism.

I do think some corporate managers have unwisely sought to protect themselves from their own shareholders by the adoption of these poison pill arrangements, the effect of which in many cases if they were ever fully triggered would be to destroy the companies.

That is the reason for the amendment. The amendment does not outlaw them flatly but provides that if a company wishes to adopt such arrangement the shareholders are entitled to vote.

I understand it is the intention of the Senator to table the Armstrong-Metzenbaum-Gramm-Shelby amendment. If he does so it would be my hope that Senators would vote against such a motion.

Mr. President, I ask unanimous consent to have printed in the RECORD letters pertaining to this matter.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

Re Tender Offer Reform Act of 1987.

PERS LEGAL OFFICE,
Sacramento, CA, September 30, 1987.

MS. NANCY M. SMITH,
Washington, DC.

DEAR MS. SMITH: Thank you for taking the time to meet with representatives of the California Public Employees' Retirement System (CalPERS).

As you know, CalPERS is the largest publically funded retirement system in the nation, with current assets having a market value of approximately $48 billion. CalPERS' membership consists of over 560,000 active employees, with an additional 212,000 retirees and beneficiaries.

As we discussed, CalPERS would be pleased to support H.R. 2172, provided the following issues are addressed:

Greenmail: On the issue of the payment of greenmail, CalPERS and corporate management are united—prohibiting the payment of greenmail will protect both businesses and shareholders from unscrupulous raiders. We strongly support this provision.

One Share-One Vote: This is an essential element of corporate democracy. As with the election of our governmental leaders, the loss of the right to vote is tantamount to the loss of all right to effect one's future.

In our discussion, you inquired as to how a federal "one share-one vote" requirement could be structured without impairing state anti-takeover legislation (such as the Indiana state legislation involved in the CTS v. Dynamics Corp. of America case). Without discussing the wisdom of such state statutes (which we do not support, see below), we believe that a federal provision, such as within H.R. 2172, need not conflict with the states' laws. Section 3 of H.R. 2172 merely assures that no *corporation* may deny equal voting rights to its shareholders; the right of the states to alter voting rights, in specific takeover situations, is not affected.

Access to the Proxy: We applaud this provision which gives shareholders greater and more equal access to proxy statements regarding the election of directors. However, for consistency and to provide shareholders with access to the proxy that is even more comparable to that of corporate management, we recommend that this provision be expanded to all issues (see, e.g., section 112 of H.R. 2668—Lent/Rinaldo).

Voting Process: In addition, we urge the House to include within this bill provisions

which protect the integrity of the proxy voting system. As we discussed, CalPERS has experienced first-hand the ability of corporate management to unfairly influence the outcome of the proxy vote.

For example, corporate management generally has the power to distribute, collect, and count all proxies, and to do so well before the shareholder meeting in which the voting results are formally tallied. Opposing parties have no ability to accurately monitor management in this process, nor is management subject to any other reliable means of assuring accountability. This process is analogous to allowing a Congressional candidate to distribute and collect his own ballots, count those ballots before they are submitted as official votes, and then contact the voters who voted against him/her to persuade them to change their votes. We are sure that you agree that such a system is subject to extreme abuse and would not be tolerated if applicable to our governmental leaders. However, this is the exact system that is allowed to exist and to govern the businesses upon which our economic stability and future depend.

Enclosed with this correspondence is a copy of a typical letter that is sent by corporate management when it fears, based upon its preliminary tally of proxies, that it will lose an issue that has been presented for shareholder vote. As you can see, this letter asks the shareholder to reconsider the vote previously cast, and to submit a second proxy that will revoke the previous proxy and which is consistent with management's position. Conversely, the opposing party has no access to the preliminary proxy tally, and thus has no opportunity to rebut these last minute contentions of corporate management. Note that this tactic is not merely used during full proxy contests involving board directorships; as in the case of the enclosed letter, this "second stage solicitation" involved a shareholder-sponsored proposal which sought to challenge the adoption by the company of a poison pill.

It has also been our experience that fund managers are often subjected to pressure by corporate management to vote their proxies for commercial or political reasons, unrelated to the interests of the beneficiaries. Also enclosed is a copy of a typical letter that may be sent by corporate management with the goal of influencing the vote of fund managers. As you know, these managers as fiduciaries, are required to vote their proxies in the sole interest of the beneficiaries for whom they manage the stock. Such tactics by corporate management seek to have the fiduciary violate its primary legal duty.

To remedy this unfair advantage afforded management, we urge the Congress to mandate a confidential system of proxy voting, similar to section 111 of H.R. 2668 (Lent/Rinaldo). With such a system, in which proxies are kept secret, tallying and auditing would be conducted by independent firms. In recognition of the need for confidentiality to adequately protect the integrity of the voting process, this system has been voluntarily adopted by many companies in which large percentages of stock are held by the corporation's employees (e.g., A.T. & T.). We strongly recommend that such a system be mandated through legislation.

National Uniformity: We urge federal preemption of state anti-takeover statutes. Current state anti-takeover laws, particularly those of the Indiana prototype, disenfranchise shareholders and reduce the value of their investments. In the absence of a willingness to expressly provide national uniformity in takeover legislation, we recommend that H.R. 2172 either remain silent on the issue or direct the Securities and Exchange Commission to further study the question.

Thank you again for taking the time to meet with us, and for considering our concerns. If we can provide additional information to you, please feel free to contact me.

Very truly yours,

RICHARD H. KOPPES,
Chief Counsel.

PAUL R. RAY & COMPANY, INC.,
Fort Worth, TX, June 1, 1988.

Hon. JIM WRIGHT,
Speaker of the House, Washington, DC.

DEAR JIM: I am in favor of the one share, one vote standard and I ask that the SEC require public companies to adopt that procedure.

Will you please intercede on our behalf.

Cordially,

PAUL R. RAY.

STATE ASSOCIATION OF
RETIREMENT BOARD MEMBERS,
June 1, 1988.

Hon. ALAN CRANSTON,
U.S. Senate, Washington, DC.

DEAR SENATOR CRANSTON: As a board member and fiduciary on the Contra Costa County Employees Retirement Fund, and speaking for myself only, I suggest that Senator Proxmire's S. 1323 is not good enough. In this case, half a loaf is not better. If passed, S. 1323 would be perceived as a solution but many serious problems remain. S. 1323 does not:

One, stop green mail, which should be prohibited to protect shareholders interests.

Two, require a one share, one vote standard to assure all shareholders have their proportionate say about corporate affairs.

Three, address those corporate schemes which discriminate against shareholders rights, golden parachutes and poison pills should be bounced outright.

Yours truly,

ED FLEMING.

PUBLIC EMPLOYEES'
RETIREMENT ASSOCIATION OF COLORADO,
June 2, 1988.

Hon. TIMOTHY WIRTH,
U.S. Senator, Washington, DC.

DEAR SENATOR WIRTH: The full Senate may consider important legislation regulating tender offers in June. I would like to share with you my views on this legislation (S. 1323), the Tender Offer Disclosure and Fairness Act of 1987.

As fiduciaries for the pension plan covering over 100,000 Colorado public employees and paying benefits to over 30,000 retirees and survivors, the PERA Board of Trustees and staff believe that shareholder rights should be protected and enhanced. By law, PERA must carry out its functions solely in the interest of members and benefit recipients. This includes maximizing investment return within acceptable risk guidelines. Unfortunately, federal laws currently allow certain practices in tender offer contests that are not in the best interest of institutional or smaller individual shareholders.

S. 1323 regulates both bidders and target company managements. As approved by the Senate Banking Committee, the bill contains a few positive steps, but in several important areas, the bill avoids meaningful reform and only calls for study by the SEC. PERA urges you to support the following changes during debate by the full Senate:

Greenmail: Payment of greenmail should be prohibited unless approved by a majority of shareholders. This practice whereby a company repurchases its shares from certain major investors at a market premium terminates the bid for control by those investors, but only at the expense of institutional and smaller individual investors.

Poison Pills and Parachutes: S. 1323 approved by the Banking Committee contains no steps to prohibit or restrict these practices which entrench and enrich corporate management. Poison pills and golden parachutes should be prohibited unless adopted by a majority of shareholders.

Confidential Voting: The confidentiality of the proxy voting process must be strengthened. Specifically, companies should be required to hire an independent third party to receive and tabulate proxies. This would help shield money managers for pension funds from company pressure to vote proxies in the best interest of the company, even if different from the best interests of the plan participants. Third party tabulation also ensures the integrity of the results. Many companies already hire third parties to tabulate proxies. Unfortunately, the bill currently provides only for a study by the SEC.

One Share, One Vote: In the past few years, some corporations have adopted unequal voting plans that give strong control to management, even though the corporation's stock is publicly-traded and management owns a minority of the stock. This practice prevents takeovers which may enhance the value of the corporation and increase returns to the majority of shareholders. The one share, one vote standard should be required by Congress for all public companies, but the SEC should be given limited authority to grant exemptions for dual class voting plans in existence before Senate floor action.

Tender Offer Summary Statements: Shareholders should receive an "executive summary of the material terms and conditions" of the tender offer, as provided in another bill regulating tender offers sponsored by Representatives Dingell and Markey. Unfortunately, the current law and S. 1323 have no such requirement.

Finally the bill addresses state anti-takeover laws. The Supreme Court recently upheld state authority to regulate tender offers. As passed by the Banking Committee, S. 1323 requires a study of state takeover laws. PERA agrees that it would be premature for Congress to preempt state regulation, but preemption should be studied seriously. An anti-takeover bill was introduced in the Colorado Legislature this year but was quickly defeated. However, other states have adopted such laws and if a hodgepodge develops, federal preemption may be necessary.

In summary, PERA believes that S. 1323 contains too many deficiencies to be approved in its present form. Tender offers should be regulated to protect the legitimate rights of the parties involved—bidders, managers, and shareholders. But, current law puts the shareholders at a disadvantage. Your support of changes suggested above would help remove the disadvantages created by greenmail, poison pills, and dual class voting systems, among other abuses. The true owners of corporations, the shareholders, should be assured democratic rights by Congress.

PERA appreciates your interest in this and related pension issues when you chaired the House Telecommunications and Finance

Subcommittee, and hopes you will continue your interest in this area in the Senate.

Sincerely,

ROBERT J. SCOTT,
Executive Director.

WATERBUG,
LAKE HOPATCONG, NJ,
June 2, 1988.

Senator FRANK LAUTENBERG,
Washington, DC.

DEAR SENATOR LAUTENBERG: You may soon consider Senator Proxmire's S. 1323, the Tender Offer Disclosure and Fairness Act of 1987. It should not be adopted in its present form unless it prohibits;

1. Green mail payments
2. Adoption of "poison pills" and "golden parachutes" without stockholder consent and it requires;
1. Confidential voting in all corporate elections
2. Independent 3rd party vote tabulations
3. Equal access to corporate proxy materials so stockholders can nominate their own director candidates, and
4. One share-one vote

Your consideration of my opinion is appreciated.

Sincerely,

ROBERT H. DUNPHY.

JUNE 3, 1988.

Hon. JOHN F. KERRY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR KERRY: As you are aware, the Senate may be taking up Senator Proxmire's Tender Offer Reform Act (S. 1323) before the end of the session. As Executive Director of the Massachusetts Pension Reserves Investment Management (PRIM) Board which manages $2.2 billion in public pension assets, I have some serious reservations about the strength of that proposed legislation.

Of particular concern is the issue of "one share/one vote". There is no provision in the Proxmire bill requiring that standard and that omission effectively disenfranchises whole classes of stockholders. One share/one vote is not, as some would argue, a question of state's right in their control of corporate governance. It should be a listing standard for any publicly held corporation traded on any national stock exchange. The SEC is considering imposing that requirement but has not, as yet, done so. S. 1323 should be amended to include that requirement before the Senate votes on the bill.

There are other weaknesses in the proposed legislation including the allowance of "poison pills" and "greenmail". I would suggest that the language in the proposed House bill (Markey-Dingell) more adequately expresses the views of institutional investors.

As a member of the Banking Committee, you are in a unique position to ensure that the strongest possible legislation emerges from your deliberations. I urge you to consider amending S. 1323 before a vote is taken on this critically important legislation.

Very truly yours,

PAUL F. QUIRK,
Executive Director.

FIRE AND POLICE
PENSION ASSOCIATION,
June 6, 1988.

Hon. TIMOTHY E. WIRTH,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR WIRTH: As you know, representatives of the Colorado Fire and Police Pension Association (CFPPA) have taken the opportunity on many past occasions to express their views to you concerning legislation affecting pension plans in general and public pension plans in particular. It is my understanding that yet another legislative initiative of great interest to pension plan fiduciaries will soon be before the Senate for action. The bill is entitled The Tender Office Disclosure and Fairness Act of 1987, S. 1323.

As a public plan fiduciary and a significant investor in corporate securities, the CFPPA is greatly concerned with protecting the long-term interests of shareholders. While we believe S. 1323 is a step in the right direction, we would urge you to support the bill only if it contains certain additional provisions.

1. Greenmail. The current greenmail provision in S. 1323 is insufficient. We believe an amendment which would absolutely prohibit the payment of greenmail is essential.

2. Golden Parachutes and Poison Pills. S. 1323 as currently written has no provisions concerning these anti-takeover defenses. We believe that absent approval in advance by shareholders, these devices should be prohibited.

3. One Share-One Vote. It is essential that a requirement be added to the bill which adopts a one share, one vote standard. Unequal voting plans adopted by many companies to date result in disenfranchisement of stockholders.

4. Confidentiality of Voting Process. We believe the current proxy process should be changed so as to require confidential voting and independent third party tabulation of voting results. This will negate the ability of corporate management to unfairly influence the outcome of proxy votes and will reduce the system's vulnerability to fraud. S. 1323, in its present form, has no provision in this regard.

The CFPPA has appreciated your past support on the many important issues affecting pension plans which have come before you. Once again, we thank you for considering our concerns and urge you to support S. 1323 only if it contains amendments addressing those concerns.

If I can provide any additional information to you, please feel free to call me.

Sincerely,

JOHNNIE C. ROGERS,
Executive Director.

MAITLAND, FL, *June 3, 1988.*

Senator BOB GRAHAM,
U.S. Senate, Dirksen Building, Washington, DC.

DEAR SENATOR GRAHAM: I am one of your Florida constituents and find that you will be instrumental in deciding if we small shareholders will continue to get one vote for each share of common stock we hold in big business or whether big corporations and their officers will further destroy our rights to vote direction they take in deciding our investment's fate.

The stink of Wall Street with the poison pills, the insider trading, the broker's greed and deceit, officers of companies' feathering their own "nest", golden parachutes, manipulation of markets * * * and I could go on * * * all point to the moral breakdown of American capitalism.

As a consequence the small investor is Damned if he does * * * and Damned if he doesn't * * * try and play the investment "game" and you are seeing a lot of us sitting on the sidelines and "holding", afraid to buy because of what has happened in the last few years, and afraid to sell because you must sell through a greedy broker in a crazy market place.

If, as I have been advised, you truly have some impact in the "one share, one vote" concept that is still our right, for heaven sake, allow us to continue this American prerogative.

Thank you for any consideration you give this request.

Cordially,

R.E. WHITESIDE.

Naples, FL, June 6, 1988.

Senator BOB GRAHAM,
Dirksen Senator Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: As one of your constituents, I would like to comment on Senator Proxmire's Tender Offer Disclosure and Fairness Act of 1987, S. 1323.

Although this proposed legislation is a step in the right direction, I feel that it has it's shortcomings when it comes down to the average individual corporate stockholder.

The bill does not address the problem of greenmail and/or use of golden parachutes by corporate management. These items are most certainly abusive measures used to prevent take overs at a tremendous cost to the corporate shareholder. In many cases it rewards executive corporate mismanagement. S. 1323 should prohibit such measures without approval of the shareholders.

The public is more aware of the fact that shareholder voting rights are practically non existent, being primarily under the control of management, viz: counting of votes, spending sums of money to fight dissident stockholders and no opportunity to include their own nominees, etc. S. 1323 should address and correct such flaws in corporate management and should require independent tabulation of voting results and confidential voting in all corporate elections. There should be fair and equal access to corporate proxy materials for shareholders to nominate their own candidates for directors.

In my opinion, the foundation of corporate democracy is the one share, one vote principal. It seems that there is a great push by corporations to erode this principal for their own purposes, mainly to control without shareholder approval. S. 1323 should address this trend and require a one share, one vote standard for all public companies, possibly excepting those who have previously adopted a dual class voting plan.

In closing may I say that we shareholders are only requesting that which is fair for all parties concerned. Good management should be rewarded with proper approved compensation and shareholders should have a choice in the management of those corporations in which they have invested their hard earned dollars. I hope that, as my Senator, that you will use your efforts to help revise S. 1323 to include the revisions necessary to protect me and other shareholders.

Sincerely yours,

BORIS KRAMICH.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, before I yield to the Senator from Maryland and then I will move to table, I would like to point out in response to my good friend from Colorado those who are opposed to the amendment on the basis of the letters that they have written to us, it is opposed by the Governors, opposed by the AFL-CIO, opposed by the National Association of Manufacturers, opposed by the State legislators, opposed by the State attorneys general, opposed by the Business Roundtable, it is opposed by the Securities and Exchange Commission, and that was cited at great length by the Senator from Maryland and the Senator from Michigan.

Mr. President, I yield to my friends.

Mr. ARMSTRONG. Mr. President, before the Senator yields, it appears to me, and I do not want to put words in anybody's mouth, it appeared to me that the big guys are against the amendment, the shareholders and the pension funds are for it.

The PRESIDING OFFICER. The Senator from Wisconsin has the floor, and he yields the floor.

Mr. SARBANES. Mr. President, I will be very brief because I know there will be a motion to table. The best sources to quote on this issue are the courts, which have had to pass on it. I am just going to quote out of two cases.

Moran v. *Household International, Inc.*, 500 A.2d 1346 (Del. 1985). The court upheld a shareholders rights plan with "flip-over" type provisions adopted as a preplanned defensive tactic. The court held that the rights plan was a reasonable defensive mechanism to protect the company from a coercive two-tier tender offer. In sum, the Household directors showed that they were well informed, had acted in good faith out of concern for the company and its shareholders, and had adopted a reasonable defensive mechanism to ward off a reasonably perceived threat to the company. The directors, therefore, were protected by the business judgment rule.

While upholding the adoption of the rights plan, the court did not relinquish the opportunity to review any future action or inaction by the board with respect to the plan. The court noted that the ultimate response to any actual takeover bid must be judged at the time it is made and that the valid adoption of the plan does not relieve the directors of their obligations and fundamental duties to the corporation and its shareholders.

Right on target. Here we are. We are allowing the courts to exercise judgment in those cases.

Mr. ARMSTRONG. Would the Senator yield for a question?

Mr. SARBANES. Surely.

Mr. ARMSTRONG. Is the Senator familiar with the Revlon case?

Mr. SARBANES. Yes, I am familiar with them.

Mr. ARMSTRONG. In those two cases, the courts found to the opposite.

Mr. SARBANES. That is right. I said in my statement earlier in some instances the courts have found these plans justified. In other instances, they have not. And that is the way the judgment ought to be made, I said to the Senator, instead of introducing the Federal Government into State governance and laying down exactly an absolute rule. The Senator is making my point: that the courts have been able to deal with this by exercising judgment in the individual instance. In some instances they have found the shareholder rights plans to serve the interests of shareholders. In other instances they have found that the directors have gone beyond the business judgment rule.

Listen to this case:

GAF Corp. v. *Union Carbide Corp.*, 624 F. Supp. 1016 (S.D.N.Y. 1985) (New York law). GAF commenced a cash tender offer for control of Union Carbide, with the intention of selling off assets of Union Carbide in order to repay the substantial debt it would incur to finance the acquisition. Union Carbide responded by (i) commencing its own exchange offer for cash and notes containing restrictions on selling assets of Union Carbide and (ii) amending its retirement plan to empower the board of directors to vest excess funding in the plan for the benefit of plan participants. The court concluded that the actions of the Union Carbide board were a reasonable exercise of business judgment to ward off a takeover that would have busted-up the corporation.

Mr. President, I submit that we ought to leave this issue of corporate governance at the State level where it has been and where the courts can make judgments in the particular case corresponding to the circumstances. There are other cases, as the Senator has pointed out, which I made reference to in my initial statement, in which the courts have overruled the directors. But there are cases in which the courts have upheld the directors. And that, in my judgment, is where the issue should be left.

Mr. METZENBAUM. Would the Senator from Maryland yield for a question?

Mr. SARBANES. Surely.

The PRESIDING OFFICER. The Chair must point out that the floor is retained by the Senator from Wisconsin, the chairman of the committee.

Mr. PROXMIRE. Mr. President, I hope we can bring this to a conclusion. We go on and on; everybody wants to get the last word. I am just as guilty as everybody else. But we have to vote now or we will have to put it off to about 3 o'clock.

Mr. METZENBAUM. Is it not a fact that in each of those cases or almost in every one of those cases where the courts have been able to intervene and indicate yes or no as to the fairness of the plan, those are cases which were not brought by individual shareholders because the individual shareholder cannot afford the cost of the litigation? But, rather, litigation brought by somebody who was attempting to take over the company? And does not your point prove our point, that if you are going to protect the shareholders you need this amendment which says that you cannot have a poison pill unless the shareholders have approved it? Just saying to them that they have the right to go into court is really a remedy without a reality because the reality is that the individual shareholder cannot afford to go into court.

Mr. SARBANES. I do not agree with that. The point I am trying to make and the reason I cited the case was to show that on the substance of the issue of the shareholder rights plans there have been a number of instances in which those plans have clearly served the interests of the shareholders.

This whole problem is created by the coercive two-tier tender offer.

Mr. METZENBAUM. Let us eliminate that.

Mr. SARBANES. We tried to limit that. We tried to limit that in this bill.

Mr. METZENBAUM. I am for that.

Mr. PROXMIRE. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question occurs on the motion of the Senator from Wisconsin to table division I(b) of the amendment (No. 2374) offered by the Senator from Colorado.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Oklahoma [Mr. BOREN] are absent because of illness.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] is necessarily absent.

The PRESIDING OFFICER (Mr. KERRY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 57, as follows:

[Rollcall Vote No. 194 Leg.]

YEAS—40

Baucus	Glenn	Proxmire
Bingaman	Gore	Pryor
Bond	Graham	Reid
Burdick	Heflin	Riegle
Byrd	Heinz	Rockefeller
Chafee	Kassebaum	Roth
Chiles	Levin	Sanford
Cranston	Matsunaga	Sarbanes
Daschle	McClure	Sasser
DeConcini	Melcher	Simon
Dixon	Mikulski	Stennis
Dodd	Mitchell	Wirth
Exon	Moynihan	
Ford	Nickles	

NAYS—57

Adams	Boschwitz	Bumpers
Armstrong	Bradley	Cochran
Bentsen	Breaux	Cohen

Conrad	Humphrey	Pell
D'Amato	Inouye	Pressler
Danforth	Johnston	Quayle
Dole	Karnes	Rudman
Domenici	Kasten	Shelby
Evans	Kennedy	Simpson
Fowler	Kerry	Specter
Garn	Lautenberg	Stafford
Gramm	Leahy	Stevens
Grassley	Lugar	Symms
Harkin	McCain	Thurmond
Hatch	McConnell	Trible
Hatfield	Metzenbaum	Wallop
Hecht	Murkowski	Warner
Helms	Nunn	Weicker
Hollings	Packwood	Wilson

NOT VOTING—3

Biden	Boren	Durenberger

So the motion to table division I(b) of the amendment (No. 2374) was rejected.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. ARMSTRONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the division I(b) of the Armstrong amendment.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The chair hears none, and it is so ordered.

The majority leader is recognized.

Mr. BYRD. Mr. President, may we proceed now with the regular order.

MOTION TO PROCEED TO H.R. 1495

The PRESIDING OFFICER. Under the previous order, there will now be a period of debate to extend until 12:45 to be equally divided and controlled by the Senator from Tennessee, Mr. SASSER, and the Senator from North Carolina, Mr. HELMS.

Who yields time?

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, how much time do the proponents of the measure have?

The PRESIDING OFFICER. The Senator from Tennessee has 15 minutes and the Senator from North Carolina has 15 minutes.

Mr. SASSER. Mr. President, I yield myself 5 minutes.

Mr. President, many of our colleagues are under the impression that this is the first wilderness or parkland bill ever considered by the Senate with a difference of opinion or a conflict among the Senators from the affected States. This is not the case. At least twice in recent memory we have enacted such legislation over the objection of Senators from affected States. I am sure that our colleagues from Alaska vividly recall the 1980 Alaska wilderness legislation which became law over their objections. I see one of the Senators from Alaska on the floor today.

In 1977, Congress enacted wilderness legislation affecting both California and Arizona over the objections of former Senator Hayakawa.

I am also informed that Members of the California delegation opposed legislation creating Redwood National Park several years ago, but that legislation became law. So there is no ironclad rule. We are not setting a new precedent. We are not plowing new ground. We are pursuing the only remedy left open to us, a course that has been used in the past when negotiations have failed to satisfy all affected parties. And let us be clear about it. This package is the product of negotiations between all interested parties who would come to the bargaining table. This is no rush job. We have had numerous bargaining sessions over the past year and a half on this bill.

We also need to clarify a few points about the road that our distinguished friend, the senior Senator from North Carolina, wants to build on the north shore of Fontana Lake. The Senator from North Carolina suggested the road could be built for less than $500,000. What does the National Park Service say? The National Park Service estimates the road authorized by the Helms bill would cost at least $4 million for construction. That is construction alone. Add annual maintenance to this mountainous terrain and you could see the cost literally skyrocket.

Second, it is suggested that the only reason the road was not built is because self-proclaimed environmentalists are holding the road up. Let us check the record. Several studies have been conducted by individuals associated with the National Park Service, the power company, Tennessee Tech University, Clemson University, U.S. Fish and Wildlife Service, and Oak Ridge National Laboratories all pointing out the damage that such road construction would occasion. This hardly fits the description of rabid environmental activists holding up construction of this road.

We have William Penn Mott, Director of the National Park Service, stating flatly that he opposes the building of this primitive access road. I ask my colleagues: Is William Penn Mott the environmental radical that the senior Senator from North Carolina suggests as stopping this road? Would an individual appointed by the Reagan administration be a party to a political act to stop this road? I do not think he would, Mr. President. I think my colleagues share that view.

The Park Service knows there are sound economic and environmental reasons for not going ahead with this road. The Senator from North Carolina further suggested that this bill has a distinctly Tennessee bias. He even argued that on Tennessee's side of the park all of the ancestral cemeteries are accessible by automobile.

Well, our distinguished friend, the junior Senator from North Carolina, set the record straight on the depth of support for this measure in North Carolina. The bill enjoys broad support from both States. Moreover, there most certainly are cemeteries on the Tennessee side of the park that can only be reached by foot.

I would wager that these types of family cemeteries exist throughout many of our national parks. Certainly in the Shenandoah National Park there are a number of such family cemeteries.

The PRESIDING OFFICER. The Senator has used the 5 minutes he has yielded himself.

Mr. SASSER. Mr. President, at some juncture, I would like to yield some time to my colleague from Tennessee if he so wishes. Could he give us some idea of how much time he might wish?

Mr. GORE. Ten minutes.

The PRESIDING OFFICER. The Senator has 8 minutes and 30 seconds remaining.

Mr. SASSER. I yield my junior colleague from Tennessee 6 minutes. I would like to reserve some time for our distinguished friend from North Carolina.

The PRESIDING OFFICER. The Senator from Tennessee, [Mr. GORE] is recognized for 6 minutes.

Mr. GORE. Mr. President, first of all let me thank my distinguished senior colleague for yielding this time. I want to thank him for his leadership and his years of work on this issue. I also wish to thank my friend from North Carolina, Senator SANFORD, for his leadership and cosponsorship of this important bill.

Mr. President, I am hopeful that the Senate will take up the Great Smoky Mountains Wilderness Act. This legislation has been delayed for many years in its adoption, but is necessary for the protection not only of the 465,000 acres directly affected, but also for the entire Great Smoky Mountains National Park. I commend my colleague and friend, the senior Senator from Tennessee [Mr. SASSER], for his leadership and years of work on this issue, and I also thank my friend from North Carolina [Mr. SANFORD] for his leadership and co-sponsorship of this important bill.

The need for this legislation can be understood more fully when the history of this magnificent park is considered.

I will elaborate in the RECORD on the history of the park.

Let me just say at this point briefly that the Great Smokies represented a new direction in national park policy in the 1920's. The 18 national parks then in existence in the West had been created from lands already owned by the Federal Government. In the Great Smoky Mountains, the lands authorized for park purchase beginning in 1926 were all in private ownership in more than 6,600 tracts.

So, this was a new departure. The States of Tennessee and North Carolina eventually had to get in and do the purchasing themselves and donate the land to the Federal Government.

The lion's share was owned by 18 timber and pulpwood companies, but 1,200 other tracts were farms. There were also more than 5,000 lots and summer homes. Many of these had been won in promotion schemes, and their owners had never bothered to pay taxes on them. This created an awesome land acquisition headache.

The Federal Government would not purchase land for national parks in those days, so in 1927 the Tennessee and North Carolina legislatures each provided for appropriations of $2 million to purchase the land. The John D. Rockefeller family supplemented the fund drive with a $5 million donation. This was considered one of the biggest and most important accomplishments of the entire national park movement. Eventually, the two States purchased the needed lands and donated them to the Federal Government.

It took years to finish the job of acquisition. Despite the tremendous impact of human land use in the Smokies, however, the most extensive virgin forest in the eastern United States is found in this park. Forest recovery is well underway throughout the park despite the former blight left by destructive logging practices, subsequent forest fires, overhunting, overfishing, overgrazing, and landslides and other forms of erosion. Now, about 60 years after the establishment of the park, wilderness is again in the ascendancy.

So, the legislation being considered today is a natural step in the progress of the Great Smoky Mountains National Park. Under the provisions of this act, most of the park will be set aside as wilderness area. This long has been advocated by environmentalists, foresters, community leaders, park officials, and citizens who know and love this park. And it is very important to note that this bill will not result in major changes in the administration of the park. It will designate as wilderness those lands classified as such in the January 1982, general management plan for the Great Smoky Mountains National Park. So this bill would serve to protect the way the park is already being run.

Every conservation and environmental group supports this bill. It passed the other body without a single dissenting vote. It has a very broad base of bipartisan support. My predecessor, the distinguished and highly-respected former Senate Republican Leader, Howard Baker, sponsored a similar wilderness bill; and as White House Chief of Staff, he helped put the administration on record in support of the wilderness proposals. The only opposition that I have heard has come from a very tiny, but vocal, minority that insists on the construction of an environmentally damaging, unnecessary road on land above Fontana Lake. This legislation repays Swain County, NC, for the failure of the Government to build such a road. Indeed, the Swain County Commissioners, the elected representatives of the area affected by the road issue, have endorsed this bill unanimously. I will speak more directly about objections to the bill in a moment.

Mr. President, the Great Smoky Mountains National Park is not only an immensely popular tourist attraction, it is a unique national asset which merits preservation. Acres of wilderness in the eastern half of the United States are few in number and dwindling. I view this bill as an opportunity to protect this park and its resources, including plant and animal life found nowhere else. No substitute which would reduce the amount of acreage to be protected would be acceptable.

Now, let me address the objections to this bill in more detail. It would be a shame if years of effort and hard work and compromise go to waste because of a very small group demands the construction of a "road to nowhere"—a road that is not needed, is not wanted by the local government, has no economic value, and will cause severe environmental damage.

In fact, Mr. President, an attempt was made to construct this road, and 6 or 7 miles of it was built. But work was abandoned in 1961, and for good reason. Landslides hampered the work, and the project was tremendously damaging environmentally. Formations of highly acidic rock are in the area; and when uncovered by road builders, this acidic material washes into nearby streams and kills them.

Those who are familiar with this part of our country can take you and show you streams that used to have fish in them that are dead today because of acidic flows like the ones that would be caused by the construction of this road.

The road that was intended for Swain County in the 1943 agreement would cost millions of dollars to build. Yet, the senior Senator from North Carolina claims that he would be satisfied with an access-type road—a road similar to those used by loggers—that would cost less than half-a-million dollars. Certainly, such a road is not what was conceived by anyone in 1943. Indeed, such a road would be absolutely useless to the needs of Swain County, NC.

The senior Senator from North Carolina has made much of the disparity between the tourism revenue of Tennessee and that of North Carolina. Surely he does not suggest that hacking a primitive logging road through the woods north of Fontana Lake would enhance tourism for Swain County. Mr. President, I suggest that such a road would have the opposite effect.

As for cemetery access, let me reemphasize to my colleagues that those families who have cemeteries in this area are guaranteed access forever by boat and four-wheel drive vehicle. This right of access is guaranteed by the very legislation we are considering today. The cemeteries themselves are excluded from wilderness designation.

Mr. President, there are family cemeteries all over the Great Smoky Mountains National Park. Most are accessible only by walking. The North Shore Cemetery Association families will be guaranteed by law what many families will never have.

On one other important point, Mr. President, my distinguished colleague from North Carolina has hammered home his belief that no matter what the consequences, this Government must "keep its word" as written in 1943. The agreement of 1943 was intended to compensate Swain County—and let me emphasize that Swain County and not the cemetery association was to be the beneficiary of the compensation. In 1943, a road was considered fair compensation. Today, as this small and very poor county struggles to provide basic services to its people, its local officials know that a "road to nowhere" would do them no good. They deserve a cash settlement—no one disputes that—a settlement that will pay for the unbuilt road and retire the county's outstanding Farmers Home Administration debt. This bill provides that compensation, and—more so than building a road—fulfills the intent of that 1943 agreement.

I urge my colleagues not to be deceived—the 1943 agreement was with Swain County, and Swain County wants the settlement we have worked so hard to provide. I ask unanimous consent that a letter to me from the Swain County Commissioners in support of H.R. 1495, and a unanimous resolution from the Swain County Commissioners in support of this bill

and the cash settlement be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MARCH 21, 1988.

Senator ALBERT GORE, Jr.,
Washington, D.C.

DEAR SENATOR GORE: Recently the Great Smoky Mountains Wilderness Bill (HR1495) received a favorable recommendation from the Senate Energy and Natural Resources Committee.

Approximately one-half of the Great Smoky Mountains National Park lies in North Carolina and is Swain County's most outstanding natural resource.

Swain County Commissioners unanimously support HR1495 and we strongly urge your active support in getting it to the Senate Floor and your vote for its passage.

We feel HR1495 is a feasible way to terminate a forty-five year old controversy between the Federal Government and Swain County. The 1943 Agreement between Swain County and the Federal Government promised a road in return for the right to flood the only road leading into the 46,400 acre areas. This flooding was necessary when Fontana Dam was built to generate hydro-electric power for Aloca at Oak Ridge, Tennessee, during World War II.

The funding structure of HR1495 appropriates to Swain County $11,100,000 in lieu of a road, which the Federal Government has not opted to rebuild since 1943. It provides a reasonable compromise compensation to Swain County that can be used to maximize the return on the investment of the $11,100,000.

This settlement will stimulate economic development, provide cash to pay for desperately needed infrastructure improvements to a small, poor county and the interest from the $11,100,000 could help pay for rebuilding deteriorated education facilities. It also settles a long standing dispute that has divided and traumatized Swain County for forty-five years.

The Bill addresses various concerns relating to appropriate cemetery access, Fontana Lake usage, and buffer zone restriction. It insures that the cemeteries will continue to be managed as they currently are with no additional restrictions being imposed.

The Great Smoky Mountains National Park attracts millions of visitors every year. From these visitors our economy is sustained. The people of Swain County led the movement to create a beautiful park for the rest of the world to enjoy and it provides a magnificent backdrop to Bryson City and the Cherokee Indian Reservation. Wilderness designation puts into law current management practices to which we have been accustomed for many years. We believe the Park, with adequate funding from the Federal Government, will continue to concentrate on quality development that will enhance and encourage the continued enjoyment of the park as it is currently used. This development will provide a positive economic impact on Swain County that is badly needed now and in the future.

Eighty-four percent of Swain County is owned by the Federal Government imposing a low tax base and chronic high unemployment. A settlement of Federal obligation dating back to 1943 is sorely needed. Our economic survival is at stake and we ask you to help us. We thank you and respectfully request your support.

Sincerely yours,

JAMES L. COGGINS,
Chairman.
MERCEDITH BACON,
Commissioner.
DR. R. MAX. ABBOTT,
Commissioner.

RESOLUTION

The Swain County Commissioners, during regular session, did conduct the following business:

Whereas, on October 8, 1943 Swain County, the State of North Carolina the Tennessee Valley Authority and the U.S. Department of Interior entered into that certain agreement which commonly came to be known as the "1943 Agreement", and the same is attached as Appendix "A"; and

Whereas, the U.S. Department of Interior in 1949 did commence construction of the North Shore Road and completed approximately a mile in length leading from Fontana Dam; and

Whereas, construction work on the North Shore Road ceased until the State of North Carolina agreed in 1959 to construct a road from Bryson City to the Great Smoky Mountain National Park boundary and thereby causing the U.S. Department of Interior a year later to resume construction; and

Whereas, the parties to the 1943 Agreement (or assignees) did attempt to enter into an agreement in 1965 that proposed a 34.7 mile transmountain road in exchange for construction of the North Shore Road, and construction of the North Shore Road has been terminated at the end of the tunnel completed in 1969; and

Whereas, the Department of Interior to date has not been able to discharge its obligations under the above-mentioned contract; and

Whereas, the parties of the above-mentioned contract did in October, 1979 establish a Study Committee to make recommendations for a resolution of the 1943 Agreement; and

Whereas, the Study Committee did make recommendation, and based upon said recommendation the Swain County Commissioners, taking into consideration the recreational-economic potential of Swain County immediately adjacent to the Great Smoky Mountains National Park and national interest of the park's preservation, endorsed introduction of House Bill 8419 as introduced by the Honorable Lamar Gudger attached hereto as Appendix "B" and approved by the then Secretary of the Interior Cecil Andrus as the resolution to the 1943 Agreement; and

Whereas, said above legislation was introduced in the U.S. House of Representatives and like legislation in the U.S. Senate during a lame duck session was not passed prior to Congress recessing; and

Whereas, Senator Baker and Senator Sasser of Tennessee co-sponsored legislation in the United States Senate and a portion of Senate Bill 1947 provided for an equitable resolution of the 1943 Agreement and was not passed during the 1984 Session; and

Whereas, Congressman Duncan of Tennessee and Congressman Clark of North Carolina co-sponsored legislation in the United States House of Representatives and a portion of House Bill 4262 provided for an equitable resolution of the 1943 Agreement and was not passed in the 1984 Session; and

Whereas, Senator Sanford of North Carolina and Sasser and Gore of Tennessee have introduced legislation in the United States and a portion of Senate Bill 693 does provide for an equitable resolution of the 1943 Agreement; and

Whereas, Congressman Clarke of North Carolina introduced legislation in the United States House of Representatives and a portion of House Bill HR1495 does provide for an equitable resolution of the 1943 Agreement; and

Therefore, based on the foregoing, the Swain County Commissioners do hereby endorse and support the passage of the bipartisan legislation currently pending before Congress, to-wit Senate Bill 693 and House Bill HR1495; and

Furthermore, the Swain County Commissioners strongly encourage not only the North Carolina Delegation, but all members of the U.S. Congress, to end this much over due Settlement of the "1943 Agreement" by passage of Senate Bill 693 and House Bill HR1495.

Mr. GORE. Mr. President, I also ask unanimous consent that a statement by Senator Howard Baker, the former Republican leader, endorsing identical legislation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR HOWARD BAKER

MR. CHAIRMAN: I want to express my appreciation to the Committee on Energy and Natural Resources and its Subcommittee on Public Lands and Reserved Water for both agreeing to conduct this hearing today on an issue of great importance to my region of our Nation and also for allowing me to submit my remarks to the committee in writing. Were it at all possible for me to have altered my schedule to present these remarks personally, I would have surely done so. And in that regard, I particularly want to thank the distinguished chairman of the subcommittee, my good friend and colleague from Wyoming, for his customary courtesy and accommodation.

And as much as I wish I could be with you today in person to press my case for the passage of Senate Bill 1947, I am comforted by the knowledge that Tennessee Governor Lamar Alexander is testifying today in support of this legislation. Governor Alexander, who I might add is quite simply the finest chief executive Tennessee has ever had and who, not unrelatedly I trust, once served on my staff, is as passionate and forceful an advocate of issues relating to the protection of the Smoky Mountains as has ever been.

Among the many things Lamar Alexander and I have in common is a shared reverence for the Smoky Mountains. We were both born in the shadows of the Smoky's scenic splendor. We both spent substantial portions of our youth amidst the pristine magnificence of these mountains, valleys, rivers, and streams. We both maintain our permanent residences in the area of the Smoky Mountains. And finally, we both draw our energy, our inspiration and our strength from these rugged, unspoiled mountains and the rugged, unspoiled and wonderful people who inhabit this portion of our state.

So you can see, Mr. Chairman, that Governor Alexander and I have a zeal and fervor about us when the topic is the Smoky Mountains. I know the Governor will address the issues before this committee with his customary eloquence and in detail, but I also want to take this opportunity to make a number of observations myself.

As I have indicated, I was most delighted to join my distinguished colleague, the

junior senator from Tennessee, in sponsoring Senate Bill 1947 for a number of reasons.

None of those reasons, Mr. Chairman, is more compelling than the issue of the federal government's obligation, clearly intended and clearly stated, to the citizens and government of Swain County, North Carolina. Both Senate Bill 1947 and Senate Bill 2183, offered by my able friend and colleague, Senator Helms from North Carolina, concur on this issue. Simply put, the government committed, in 1943, to construct or pay for the construction of a road in this county to replace one which was flooded by the creation of Fontana Lake. The value of that road to the county has been agreed upon as $9.5 million. The county has not been compensated by the federal government for this obligation, and it is time we square that debt, as we say in Tennessee. Both the bills before the Subcommittee would do just that by authorizing an appropriation in the amount of $9.5 million in settlement of such claims as may exist.

There exists, Mr. Chairman, another issue of the construction of a road, that above the north shore of Fontana Lake, to the Hazel Creek area of the park, which is called for in Senator Helms' bill, but not in the legislation offered by Senator Sasser and myself, I would only say that I applaud the diligence with which Senator Helms' represents his constituents. However, it is my understanding, based on information provided by the Park Service, that such a road may create significant environmental problems in a very sensitive ecosystem, and the costs of construction are indefinite and might run beyond the amount authorized. Consequently, I would hope that the Committee would carefully examine this proposal so that the best interests of both the park and the American taxpayer are served.

Finally, Mr. Chairman, with regard to the issue of how much of the Great Smoky Mountains National Park be declared a wilderness area and subjected to the protection therein, S. 1947 provides such a designation for 467,000 acres. I do not believe this to be an unduly large tract for such designation in the context of this park and this region of the country. I am well aware of the Chairman's views on such designations, but would respectfully suggest that, inasmuch as this is a national parkland, development or resource extraction is unlikely in any event. However, I recognize that reasonable men may differ and in the Senate often do. Senators Helms and East have offered a proposal which would exempt from wilderness designation roughly 67,000 acres which Senator Sasser and I have included in our approach. Rather than insist on one acreage figure over the other, it would be my sincere hope that agreement can be reached on some middle ground by all concerned parties. Perhaps the guidance of our esteemed Subcommittee Chairman could provide the means to that end. It is, after all, the protection of the unsullied grandeur of the Smokies which concerns all of us, and I believe there is substantial agreement among us that a wilderness designation would greatly enhance the prospects for such protection.

Thank you again for your indulgence and your consideration.

Mr. GORE. Mr. President, as for North Carolina support for this measure, I want to call my colleagues' attention to three editorials that appeared in North Carolina newspapers. The Greensboro (NC) News & Record in its editorial of March 27, 1987, entitled "The Road to Nowhere," says:

We sympathize with those who have an attachment to their ancestral burying grounds. But since they are not denied free access, and since there is little chance that the road will ever be built, it's time to give Swain County the cash and leave the park alone.

The Charlotte Observer, in its editorial of January 7, 1988, entitled "Protect the Great Smokies"; and the Asheville Citizen, in its editorial of March 12, 1987, entitled "Settlement Delay Unfair to Swain County," that express North Carolina support for this bill.

I ask unanimous consent that all three editorials be printed in the RECORD in full.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Greensboro (NC) News & Record, Mar. 27, 1987]

THE ROAD TO NOWHERE

Tucked away in the Great Smoky Mountains of far western North Carolina is a six-mile stretch of road that some residents of Swain County call "The road to nowhere." The road runs north out of Bryson City, winds along the north shore of Fontana Lake and then, after passing through a tunnel cut in solid rock, ends abruptly.

Over the years, the road has generated more controversy than it is worth. The time has come for abandoning any hope that it will ever lead anywhere. A bill sponsored by Rep. Jamie Clarke of Asheville and Sen. Terry Sanford would compensate Swain County for the loss and declare much of the Smoky Mountain National Park as wilderness area. We hope the bill receives swift and favorable treatment in Congress.

In 1943 Swain County deeded 44,000 acres of land to TVA for construction of Fontana Dam and Lake. In return, the county thought it had a firm agreement for a government-built access road to almost two dozen cemeteries isolated by the new lake. Along the way, however, the government reneged on its promise of a road. A court later ruled that the government's commitment was contingent upon congressional appropriation of funds.

With the passing of time, Swain County commissioners have become convinced the road never will be built. Environmentalists strongly oppose the costly road because they say it will despoil a prime wilderness area and open it to campgrounds and other development. With development threatening the perimeters of many of the nation's national parks these days, it's hard to justify building another road in one of the most majestic and popular of those national treasures.

Commissioners are willing to settle for a lump sum payment and other concessions in return for giving up the road. They are opposed, though, by a group of citizens known as the North Shore Cemetery Association, who insist that the road should be completed.

Two bills introduced in Congress this session have revived the debate. They are almost a repeat of a 1984 scenario, when two proposals killed off each other. The Clarke-Sanford bill, which is also endorsed by Sen. James Sasser of Tennessee, would never complete the road. Instead, it would make much of the park a wilderness area, would authorize payment of $9.5 million to Swain County and would cancel a $1.6 million federal school construction loan to the county. The bill would also guarantee that the park service will continue furnishing access to the graveyards through free boat trips.

A second bill sponsored by Sen. Jesse Helms offers the same sweeteners, with one big difference: It would allow a "logging-type" access road to the cemeteries. Predictably, environmentalists see this as a foot in the door to further development on the park's fringes.

Swain County commissioners, who back the Clarke-Sanford version, point to the county's almost desperate need for additional income that would be gained from investment of the lump sum payment. The county suffers from a low tax base and high unemployment and cannot afford the luxury of another fruitless battle over the road.

We sympathize with those who have an attachment to their ancestral burying grounds. But since they are not denied free access, and since there is little chance that the road will ever be built, it's time to give Swain County the cash and leave the park alone.

[From the Charlotte Observer, Jan. 7, 1988]

PROTECT THE GREAT SMOKIES

The U.S. Senate is considering three bills that would designate most of the Great Smoky Mountains National Park in North Carolina and Tennessee as wilderness. One is a House-passed bill, sponsored by N.C. Democrat James Clark and Tennessee Republican John Duncan, making 467,000 of the park's 519,000 acres wilderness. Almost identical is a Senate bill sponsored by Sen. Terry Sanford, D-N.C., and Sen. Jim Sasser, D-Tenn. Blocking efforts to make one of those bills law is Sen. Jesse Helms, R-N.C., who has his own Great Smokies wilderness bill. Sen. Helms's bill would designate only 400,000 acres as wilderness and would authorize construction of a road to some family cemeteries in the western part of the park near Fontana Lake.

While we respect Sen. Helms for honoring a commitment he apparently made to some Swain County residents who want a road to the cemeteries, the House bill or the Sanford-Sasser bill would be preferable to his. The road Sen. Helms proposes is opposed by conservationists, by the National Park Service and by the Reagan administration because it would run more than 30 miles across steep ridges north of the lake, through the heart of the proposed wilderness. Preventing that sort of construction is precisely the reason a Great Smokies wilderness bill is needed.

The park service provides access to the cemeteries for family members and other interested persons 10 or more times a year at no cost. The trip, which takes about an hour, crosses Fontana Lake by boat and then uses a van to reach the cemeteries over long-established primitive roadways. Under the House bill or the Sanford-Sasser bill, that service would continue.

Those two bills also would resolve a long-standing dispute between the federal government and Swain County. In 1943 the park service agreed to construction of a road providing a new access into the park from Swain County. But the road was abandoned around 1961, after some seven miles were completed, because of landslides and because builders encountered formations of highly acidic rock that kills streams when it washes into them. Under either of the bills,

the government would pay the county $9.5 million—the amount the county contributed to the road, plus interest compounded through 1980.

It is important that Congress pass a bill designating currently undeveloped areas of the park as wilderness. Sen. Sasser first introduced such a proposal in 1977, and a decade later the Great Smokies became the first national park ever to attract 10 million visits in one year. The very popularity of the park will bring growing pressures for development that would eventually begin to destroy its natural beauty and character. As Ron Tipton of The Wilderness Society says, "The only way to ensure a proper balance of preservation and use in the Smokies is to designate wilderness." Apparently even Sen. Helms doesn't dispute that.

[From the Asheville Citizen, Mar. 12, 1987]

SETTLEMENT DELAY UNFAIR TO SWAIN

Resolution of the north shore road controversy has waited years longer than necessary, and the delay has cost Swain County millions of dollars that it desperately needs. Those who have opposed a financial settlement should defer to the larger interests of Swain County residents and allow this matter finally to be put to rest.

Opponents include members of the North Shore Cemetery Association and Sen. Jesse Helms. Association members, working through Helms, have blocked a settlement because they want a road built to cemeteries that were cut off from convenient access when Fontana Lake was built during World War II.

The federal government agreed to build a road along the north shore of Fontana when it acquired the land. The purpose of the road was to provide economic benefits to Swain County. It would open more of the Fontana shore to development and compensate the county for roads that were flooded by the lake.

But when the area later became part of Great Smoky Mountains National Park, the lakeshore lost its potential for development—so the road was never built.

Although the road was not intended primarily to provide access to cemeteries left in the park, decendants of those buried there had counted on using it for that purpose. They felt cheated when plans for it were dropped.

Swain County felt cheated for a much larger reason: It never received the economic compensation the road represented.

The National Park Service offered to settle the issue in 1980 by giving Swain $9.5 million in lieu of the long-abandoned road. Members of the cemetery association, with Helms' help, have managed to delay any such agreement. They want a road of some sort, one whose only purpose would be to provide land access to the cemeteries. Access now is by boat across the lake and a slow trip by four-wheel drive vehicle.

A road is never going to be built. The slight benefits of a road to a few dozen families do not justify the environmental damage it would do to the park. In addition, the Park Service intends to manage that part of the Smokies as wilderness, which precludes road-building.

Last year the Park Service offered to guarantee access to cemetery association members if they would go along with a settlement. Then-Rep. Bill Hendon told them it was the best deal they were going to get.

Rep. Jamie Clarke and Sen. Terry Sanford have introduced legislation to complete the settlement. Their bills designate most of the park as wilderness, award Swain County $9.5 million in cash compensation and direct the Farmer's Home Administration to forgive a loan the county used in 1976 to build a high school. Annual payments of $130,500 on the loan extend to 2008. The Park Service remains willing to guarantee access to the cemeteries.

Supporters of the association say it is tragic that people have to go through so much trouble to visit their family cemeteries. The real tragedy is that Swain residents have been denied the settlement that was offered seven years ago.

Swain is an economically depressed county struggling to maintain minimal services, let alone develop its economic base. Unemployment ranges to 20 percent and above. The county desperately needs to build new school buildings and to make improvements to basic services.

Swain's annual property tax revenues total barely $600,000. Interest alone on the $9.5 million would exceed $700,000.

The county already has lost more than $7.5 million in interest and loan payments since 1980. Therein lies the tragedy: that a compensation package beneficial to so many has been blocked for so long, all because of the stubborness of a small group of people and one senator.

Swain residents overwhelmingly favor the settlement. County commissioners support it unanimously. Congress should let nothing, certainly not a single senator, stand in the way any longer.

Mr. GORE. The case is clear, the justice of the settlement is equally clear, there is no need to further delay this matter, and I urge my colleagues to permit a final resolution of this decades-old issue.

I commend to my colleagues' attention the editorials that I have included in the RECORD from North Carolina in support of the legislation. I hope we will vote cloture and take this bill up.

Thank you, Mr. President.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from North Carolina controls the time.

Mr. HELMS. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Tennessee has 1 minute and 49 seconds.

Mr. HELMS. I yield 3 minutes to the distinguished Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized for 3 minutes.

Mr. MURKOWSKI. Mr. President, reference has been made by the Senator from Tennessee to precedents set with regard to legislation of this type affecting my State of Alaska, and I believe reference was made to Hawaii as well.

I think we have a situation here where a precedent is being established within this body that is of great concern, and should be, to all of us, particularly those of us in the Western part of the United States, where much of our land mass is under the control of the Federal Government. It is obvious that we have a situation here where we have a substantive disagreement, but that is nothing unusual, when we have issues motivated by wilderness on one hand and a commitment on another.

Basically, a deal is a deal. A commitment has been made in good faith, initially, and the Federal Government has yet to deliver on that commitment.

As we look at situations with our own State of Alaska and applicable situations in other States out West, it is clear that in issues such as those addressed with regard to the environmental community, you do not have a quantifying formula of any consequence to resolve a situation. Those people who are motivated by the cause of more wilderness—and it is certainly an honorable and justifiable motivation—clearly want more. The balance is resolved, in most cases, through some type of consensus by the people mostly affected.

It is unfortunate that that has not been able to be resolved by the individual Senators from the State affected. But to suggest that these matters should be resolved in this body sets a precedent about which the junior Senator from Alaska is very concerned, because it simply becomes easier for the next time that a dictate is made by this body with regard to the utilization of land and the situation with regard to previous commitments that have been made which are suddenly overturned as a consequence of efforts of parties that cannot resolve the issue.

It seems to me that it would be much better to take the matter back and agree that further discussion must take place in order to try to get some type of resolution, because to bring it before this body simply sets a precedent that I do not think is in the best order of the Senate, nor of the State affected, nor of the Senators from that State.

Mr. STEVENS. Mr. President, will the Senator yield me 2 minutes?

Mr. HELMS. I yield.

Mr. STEVENS. Mr. President, Senator MURKOWSKI has stated what has happened in terms of the Alaska provision. Because of our great interest in matters such as this, I believe I have been involved in every instance that the distinguished Senator from Tennessee has mentioned—the redwoods and the other wilderness concepts.

I remember well the debate on the Alaska lands bill. When we reached the point of great impasse on the floor of the Senate, my good friend, the then-Senator from Washington, Scoop Jackson, with his great wisdom, pulled down the bill, took the bill to what, in effect, was a conference in his hideaway. That went on for 2 weeks—10, 12, 14, 16 hours a day. There were

people in this hideaway working on this Alaska lands bill.

The final provisions of that bill were not totally to my satisfaction, but it was about 80 percent of what the Alaskan people sought to protect their rights and their interests and the commitments that had been made to them in the past.

As I understand what the Senator from North Carolina wants now, it is for the Federal Government to live up to the agreement that was made. I recommend that procedure to my friends from Tennessee. There is no question that had Senator Jackson not found a way to eliminate the dispute between the then-Senator from Colorado, Mr. Hart, and me—as a matter of fact, some of the dispute was between me and my colleague from Alaska at that time—the Senate floor would have been a very disagreeable place for months.

I do not believe that the Senate ought to take action which would make a commitment that has been made to individuals concerning developments of this type. Those agreements can be modified, and we modified a lot of them with regard to the Alaska land spill, but they were done with negotiations and a concern and a consideration for the people involved. It was not done roughshod.

I think the fact that the Alaska lands bill became law demonstrates that, because we could have stopped that bill. This bill may pass in terms of cloture now, but it will be stopped unless you work out an agreement.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HELMS. Mr. President, I will start today as I started yesterday, by saying that we can end any dispute or disagreement on this bill if there will be a compromise.

The distinguished Senator from Tennessee remarked this morning that the bill that is proposed to be pending before us is a result of years of study and compromise. Compromise with whom? There has been no compromise. That is the problem.

Then they enumerated various people in Tennessee who like this bill, Mr. President. Let me tell you who does not like this bill—the people of North Carolina do not like this bill.

Mr. President, I can go on down the list. Who does not like it? The State of North Carolina. I put a letter in the RECORD yesterday from the Governor.

The Cherokee Tribe. The chief of the Cherokee Tribe is in Washington, DC, right now, lobbying against this bill.

Others who do not like this bill are the North Carolina Parks and Recreation Council, the North Shore Historical Association, the Bryson City Board of Aldermen, the Graham County Commissioners, the Graham County Chamber of Commerce, the Cherokee County Commissioners, the Eastern Band of Cherokee Indians, 90 percent of the businesses in Bryson City, and more than 6,800 people in western North Carolina, including 3,700 who live in Swain County.

In addition, the National Veterans of Foreign Wars supports my bill over the Sasser bill. There are veterans buried on those ancestral cemeteries which are not accessible in any real way.

So let us not talk about compromise. There has not been any effort to compromise. That is why I plead with Senators once more to reject cloture this afternoon, so that Senator SASSER will be encouraged to try to work this thing out.

Because of the limited time of this debate, I could not yesterday, and I cannot today, go into much detail, but let me hit as many highlights as I can and elaborate on some of the points I tried to make yesterday.

To say that the people of western North Carolina are not concerned about this pending legislation which is the work of the Senator from Tennessee is just absurd. The people of North Carolina do not want this bill unless accommodations can be made.

These accommodations are twofold: First, leaving out of wilderness approximately 44,000 acres located north of Fontana Lake; second, authorizing moneys for a logging-style road north of Fontana Lake so that these people can continue to visit their ancestral cemetery.

The red herrings that have been dragged into this thing are bewildering to me.

If the Senator from Tennessee and the junior Senator from North Carolina are willing to make these concessions, they can have over 400,000 acres—including over 200,000 acres in North Carolina—placed into wilderness. But until these two minor concessions can be made, I will do everything I can to defend the interests of the people of western North Carolina.

Some Senators may think that consideration of H.R. 1495 is merely a struggle between North Carolina and Tennessee or between Democrats and Republicans. And some Senators are saying, particularly on the other side, "Well, I really don't have a dog in this fight." And so they will vote for cloture. I remind Senators, however, that allowing this bill to be considered by the Senate erodes the power every Senator has to protect the interests of his or her citizens. Never before, with the exception of an Alaskan bill—and the two Alaska Senators have just discussed that—has the Senate considered a bill placing land in wilderness unless and until all affected Senators agreed to the bill. It just has not been done.

Consideration and ultimate passage of this bill tells the powerful environmental groups that whatever they want, they will get. Let the people be damned. The Senator in the affected State has no rights or power to assure that his citizens' interests are protected.

If we let the powerful lobby get by with this thing, those Senators will have no right or power to assure that his or her citizens' interests are protected.

Ranchers, hunters, and farmers, and so on, will be at the mercy of these highly organized environmentalists who for the past 24 hours have used the phone banks calling every Senator's office and every other pressure that they can mount.

I heard on the Senate floor the statement that H.R. 1495 is a national issue and it represents what is best for all Americans. I might agree with that point which is why I disagree with the Sasser bill.

We heard all the figures from the Senator from Tennessee yesterday. Look at this: In 1986, 9.8 million people visited the Great Smoky Mountain Park. That is right. But of this number, 9.8 million, only 68,400 nights were spent at camp sites approachable by foot. That means that less than 0.7 of 1 percent of those who visited the park were backpackers, and those figures were about the same as 1987.

Mr. SYMMS. Mr. President, will the Senator yield?

Mr. HELMS. Certainly. I am glad to yield to my friend.

Mr. SYMMS. I thank the Senator for yielding.

I say I totally concur with what he is saying. In my State the figures are even much greater that the wilderness is not being used by people and recreation areas are. What people want are campsites and access so they can take their family out and enjoy the great outdoors, and we should be managing these lands.

And I would say to the Senator that notwithstanding the fat-cat environmentalist lobby that has so much money to try to lock up so much land in this country and deny people access to it, the day will come when enlightenment will prevail and the truth will prevail and people will realize the folly of denying land from use.

I might just say I had a speech I wanted to give this morning. I do not have time now. But I would like to quote the Senator what the Wilderness Act says about people and what it says is that it is a man apart from nature an ethic that had profound impact on the authors of the wilderness bill and the old Wilderness Act has proven they are denying homosapiens access to our land.

I think the day will come when we will realize the folly of this and some Congress somewhere in the future will reform at least the Wilderness Act to a

more modified version where people can actually have access to this land and use it.

What good does it do to let the bark beetles, tusky moss, and forest fires take over and destroy our land when we have the technology to manage these forests and manage these lands in the fashion that we in fact can enjoy them and people can have a better life?

I totally concur with the Senator, and I am totally in opposition to this bill.

I thank the Senator for yielding and I support him and I hope all Senators will support the Senator from North Carolina on this cloture vote.

Mr. HELMS. Wilderness will shutdown development in the park. No more roads can be built; no more developed campsites can be built; no more visitor centers can be built.

In essence, the Sasser bill says to 99.3 percent of the park visitors that they will never be able to visit other areas of the park. The elderly cannot backpack; the handicapped cannot backpack; families with small children cannot backpack. These peoples' interests are put on the back burner for the sake of less than 1 percent of the visitors to the park.

So I agree with the Senator from Tennessee, Mr. President. Placing the Great Smoky Mountain National Park into wilderness is a national issue. And, quite frankly, Mr. President, if the 10 million visitors to the park knew exactly what wilderness designation was, they would be just as adamantly opposed to the Sasser bill as the 6,800 people of western North Carolina.

Just as this bill is unfair to the American public, it is unfair to the people of my State, Mr. President. The Park Service has told me that every cemetery in Tennessee is accessible by private vehicle. Visitors to the Tennessee cemeteries just call up the Park Service and they lower the chains and allow the visitors to use access roads to the cemeteries. In North Carolina, 30 of the 70 cemeteries are inaccessible by private vehicles and the people down there have to climb onto pontoons and cross Fontana Lake and then ride in whatever cart or vehicle the Park Service provides to the cemeteries.

This bill will kill tourism in western North Carolina. Tennessee's got its booming industry. Less than one-quarter of its land is owned by the Government. Tennessee's got Gatlinburg and Cades Cove which attracts thousands of visitors to its end of the park. Tennessee has two entrances to the park and two main highways running into the park.

North Carolina, on the other hand, has one entrance and one road. Furthermore, it cannot develop much of the land surrounding the park because over half of it has been taken by the Government.

Developing the park on the North Carolina side of the park is the only hope for a tourism industry in western North Carolina. The Sasser bill will end all development and will devastate the tourism in western North Carolina.

In closing, Mr. President, I make this one point. The environmentalists have made H.R. 1495 into the environmental issue of 1988. This bill is not going to protect the environment. The land affected by H.R. 1495 is already owned by the Park Service. It is not about cost. The Forest Service says it builds logging style roads for as little as $18,000 per mile.

The issue is about fairness and Senators' rights. It is about the government keeping its word and living up to its commitments. It is about the right of each and every Senator in this Chamber to protect the rights and interests of his or her constituency. That is what is at issue and that is what this Senator will fight for as long as there is a breath in him.

I urge Senators to vote against invoking cloture on the motion to proceed.

Mr. SANFORD. Mr. President, I rise to urge my colleagues to vote in favor of cloture on the motion to proceed to consideration of H.R. 1495, the Great Smoky Mountains Wilderness Act. We are deciding the fate of perhaps the greatest remaining natural area in the Eastern United States. We are deciding in a very real sense the future of Swain County, NC. The Senate ought to at least have the opportunity to consider this very important legislation.

Mr. President, we have precious little wilderness left in this country. It is sometimes argued that we have too much wilderness; too much land that is "locked up" in a State designed by nature and not by the hand of man. Nothing could be further from the truth. Only 1 percent of our land in the lower 48 States is now wilderness. In North Carolina, just three-tenths of 1 percent of our land enjoys such permanent protection. Even if the Great Smoky Mountains were not worthy of preservation—which they certainly are—it makes little sense to argue that our bill will somehow result in North Carolina being "locked up" by wilderness. If we pass H.R. 1495, North Carolina will still have less wilderness than the average State.

What is this bill all about? Mr. President, let us not become too distracted from the main issue. The Great Smoky Mountains National Park is a tremendous resource for all Americans. It is a national park, and its heritage belongs to all of us.

John Muir once said,

> The tendency to wander in the wilderness is delightful to see. Thousands of tired, nerve-shaken, overcivilized people beginning to find out that going to the mountains is going home; that wilderness is a necessity; and that mountain parks and reservations are useful not only as fountians of timber and irrigating rivers, but as fountains of life.

Mr. President, the Smoky Mountains are such a "fountain of life" which must be set aside for future generations to enjoy.

The Great Smoky Mountains have the highest peaks and deepest valleys in the East. They represent the largest virgin hardwood forest in the country. They possess an incredible biological diversity—some 400 species of animals and an amazing 1,500 species of plants. Black bear, bald eagles, and probably even the rare Eastern cougar can all be found within this mountain paradise. The Great Smoky Mountains National Park is one of the world's few places that has been honored as both a World Heritage Site and an International Biosphere Reserve.

Mr. President, Congress in 1964 established a wise policy of protecting and preserving our most outstanding natural areas by designating them as wilderness. Since 1964, we have done exactly that in a number of instances. The Smoky Mountains are clearly such an outstanding area, and we should protect them. This is what we are talking about here today.

I would remind my colleagues that H.R. 1495 is supported by this administration. We did not arbitrarily select the areas deserving wilderness designation in the Smokies; they did. I would remind my colleagues that this bill enjoys broad bipartisan support. Not a single member of the North Carolina delegation opposed this bill in the House; not one. In fact, not one Member of the House, Republican or Democrat, from anywhere in the country opposed this bill in the other Chamber.

Mr. President, I think I have adequately demonstrated in the past that H.R. 1495 does enjoy broad support in North Carolina. Nearly every major newspaper in the State has editorialized in favor of our bill, and none have opposed it. The important regional organizations in western North Carolina back our bill. If I may quote from an outstanding summary of these issues written by Will Curtis, the editor of the Asheville Citizen-Times,

> (Some) say it is only "Environmental groups" and outsiders who oppose the building of a road and who favor wilderness designation. I'm not an outsider. I want to see wilderness status for the Smokies. So do most other mountain people. The last time anyone took a poll on the question, Western North Carolina residents by a huge margin favored wilderness designation for the Park. Swain County residents support the proposed settlement overwhelmingly. Swain commissioners support it unanimously.

The settlement referred to by Will Curtis is included in our bill. The settlement provides a means for the Fed-

eral Government to make good its old debt to the county, dating back to 1943 when one of Swain County's roads was flooded by construction of Fontana Lake. The Government's legal obligation is to Swain County, and Swain County supports our bill. This is an important point, so let me repeat it: the Federal Government agreed in writing to compensate Swain County for the flooded road in 1943, and Swain County wants to settle the matter as provided for in our bill, not any other bill.

Mr. President, Swain County agreed to this settlement 8 years ago. The only reason it has not been fulfilled is because it has been blocked here in the Senate for the past 8 years. If that settlement had occurred in 1980, as the county desired, the county would have received $7.6 million in interest payments to benefit their school system and to invest in their future economy.

Swain County is not wealthy. It has the second highest unemployment rate in North Carolina. It has a low per capita income. It has a small tax base. Mr. President, Swain County desperately needs new revenues to invest in its future. Its school system has many needs. It needs to create incentives and infrastructure for new businesses. It cannot now do so.

H.R. 1495 would increase the county's revenues by 30 percent, and provide a permanent pool of funds to be used for its future. That future is very cloudy at present. H.R. 1495 will brighten that future considerably. If this bill is blocked again in the Senate, as in the past, the American people will have lost an opportunity to preserve a precious natural resource, and the schoolchildren of Swain County will have lost opportunities for a better future.

Mr. President, I have worked hard to address every possible concern about this bill. Our bill guarantees that a unique service provided by the Park Service to assure access to North Shore cemeteries will continue. Contrary to what some have suggested, there is no such special access or vehicle access to many of the 78 cemeteries on the Tennessee side of the park. Nor, to my knowledge, is such special transportation as the Park Service provides to North Shore cemeteries available anywhere else in the country.

There is no reference to cemetery access in the 1943 agreement. We should keep that in mind. The road the Interior Department tried to build was intended as compensation to Swain County, and was not tied to the cemetery issue in any legal sense. The courts have addressed this issue. However, there is a moral obligation to provide such access, and our bill does that. In fact, we have prepared a floor amendment that will not only guarantee such transportation, but will substantially improve it.

Mr. President, I have worked to address numerous other issues of local concern. We have worked to ensure that outstanding private rights in the North Shore area will be fully addressed, and our amendment will speak to that. We have worked to commemorate the history of the North Shore area, to exclude from wilderness any areas with historic value or development potential, to guarantee that current uses of Fontana Lake and all other areas will continue, and in fact to make sure this bill takes away no right or activity currently enjoyed by any citizen. We have made numerous changes in our proposal. Yet we have heard that unless we build an expensive and damaging road, and fail to protect some 44,000 acres considered vital by our own administration, we cannot have a bill.

Mr. President, if the Senate desires to give Swain County an extra $4.3 million, I will certainly support that. That is what the primitive road we have heard about would cost, not $400,000. But I suggest that if the Senate wishes to grant that extra $4 million, that it be put to use where it will benefit Swain County the most. It should go into the schools and economic development for the whole county, not for an environmentally damaging road that will bring no tourism and benefit but a few.

I ask unanimous consent that a letter from the administration detailing the cost of the primitive road be placed in the RECORD at this point along with some other information relevant to the building of a road through the area.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Atlanta, GA, June 10, 1988.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: This letter is written in response to your request for clarification of the National Park Service's estimate for construction of a primitive road along the north shore of Pontano Lake. You will recall that Director Mott testified at the wilderness hearings in June 1987 that such a road would cost an estimated $4.3 million to construct.

Director Mott's estimate was based upon figures compiled at your request in 1984. Our construction estimates for approximately 20-miles of primitive gravel road were as follows:

Planning, design, preconstruction surveys	$400,000
Environmental impact statement	100,000
Grading (and hauling)	2,000,000
Gravel base	1,000,000
Drainage (bridges and culverts)	400,000
Project inspection, supervision, surveys	400,000
Total	4,300,000

We have re-examined these figures and find that they still represent good ballpark figures for low-grade road construction standards.

We do not have appropriate information to comment on the U.S. Forest Service road construction estimates. However, they build primitive roads primarily for timber harvesting access using construction standards and methods that are generally less stringent environmentally and aesthetically than those used by the National Park Service.

I hope that this information answers the substance of your questions. Thank you for your continuing interest in the National Park System.

Sincerely,

ROBERT W. BAKER,
Regional Director.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Gatlinburg, TN, April 23, 1987.

In reply to: A3815.

Hon. TERRY SANFORD,
Hart Building, Washington, DC.

DEAR SENATOR SANFORD: We have been asked to respond to your office on questions that have arisen concerning the wilderness proposal for Great Smoky Mountains National Park.

All wilderness proposals are limited to areas inside the Congressionally mandated Park boundaries and therefore no land is involved either on or south of Fontana Lake. As referenced on the map in the General Management Plan, the potential wilderness boundary approximates the high water level of the Lake. We have made no proposals to alter present boating use on Fontana Lake which is not managed by us but by the Tennessee Valley Authority.

There are major concerns surrounding any road construction in the Smoky Moutains because of the potential of exposing the Anakeesta rock formation which contains iron pyrite and heavy metals. Once Anakeesta rocks are exposed they oxidize, and acids and heavy metals are leached by rainfall. Documented evidence shows that the most severe impacts occur within stream courses, where polluted rainwater can kill all life in a stream.

When the Park transmountain road (441 from Gatlinburg to Cherokee) was realigned on the North Carolina side of the Park near Newfound Gap in 1963, a quantity of Anakeesta rock was uncovered. The leachates from the construction and resultant roadfill flowed into Beech Flats Creek and some 24 years later, there is still no aquatic life for the first mile of stream.

Documented studies of Fontana Lake sediments bear witness to concentrations of heavy metals which are leached from natural geologic origins, exposed rock and mine shafts. Sugarfork Branch on the Hazel Creek drainage is sterile of aquatic life forms as a result of abandoned copper mine runoffs.

There is good evidence to support the likelihood of encountering pockets of Anakeesta rock in the Lake area. Heavy metals have concentrated in the sediments downstream from disturbed areas on either end of the Lake, leaching from rock exposed by the construction of Lake Shore Drive on the east end, as well as from the mine shafts in the Hazel Creek drainage to the west. Equally as important, records also indicate the presence of other naturally exposed rock containing heavy metals in the area north of the Lake. Such indirect evidence points to a high probability of exposing

more Anakeesta formation during construction of a north shore road.

Any road construction in the Smoky Mountains must depend on extensive cuts and fills. Because of the crumbling nature of the rock, the extreme tipping and faulting of layers and the interspersing of more solid layers with slick components like red clay, the rock is not stable, and constant problems of fill-sinking and cut-sluffing can be expected. These situations can be hazardous to visitors, as well as a constant and continual costly maintenance burden. The best example of these types of situations are evidenced by the I-40 Pigeon River gorge maintenance problems of the States of North Carolina and Tennessee.

The very necessity of extensive road cuts and fills to maintain grade specifications to standard would compromise, aesthetically, many of the very scenic reasons visitors come to the area. Unfortunately, there is also an inverse relationship between wildlife abundance, especially bears, and the number of roads in an area. With the quickly diminishing wildlife habitat outside the Park, maintaining the integrity of the Park interior becomes an even more critical need.

Again, we appreciate very much your interest and support for the Park. Should you or your staff have any further questions, we stand ready to assist.

Sincerely,

RANDALL R. POPE,
Superintendent.

U.S. DEPARTMENT OF INTERIOR,
NATIONAL PARK SERVICE,
Washington, DC, February 14, 1974.

Hon. ROY A. TAYLOR,
House of Representatives, Washington, DC.

DEAR MR. TAYLOR: Thank you for your inquiry in behalf of Mr. Odell Shuler of Bryson City, North Carolina, requesting a breakdown of National Park Service funding for the Bryson City-Fontana Road in Great Smoky Mountains National Park.

A recapitulation by project segment of the $5,744,300 appropriated to date for the Bryson City-Fontana Road is provided below:

Segment description	Amount	Fiscal year
From the park boundary near Bryson City to Canebrake Creek (2.5 miles). Completed in August 1963	$580,000	1960
From Canebrake Creek to Noland Creek (2.1 miles). Completed in August 1965	1,257,000	1961–62
From Noland Creek to a point 500 feet beyond the tunnel at Tunnel Ridge (Terminus 9A3) (1.7 miles). Construction included a bridge across Noland Creek and a 1,200-foot tunnel. Completed in September 1970	1,162,000	1966
	795,000	1967
	1,200,000	1968
Project planning for the next 2.3 miles, from Terminus 9A3 to Forney Creek, including the tunnel portals for the 1968 project	35,000	1970
From Terminus 9A3 (vicinity of tunnel) to Forney Creek (1.2 miles), including tunnel portals. $255,000 for the tunnel portals portion obligated in June 1973; to date the project is 70 percent completed. $460,000 for road construction portion unobligated as of this date; plans are completed for this portion, but construction is delayed pending approval of environmental impact statement	715,000	1972

I appreciate your continued interest in Great Smoky Mountains National Park and hope this information satisfactorily responds to Mr. Shuler's inquiry.

Sincerely yours,

RONALD H. WALKER,
Director.

Mr. SANFORD. Mr. President, one of the finest public servants in Washington is William Penn Mott, the Director of the National Park Service. His comment on this whole thing several weeks ago to me was that it is just a shame that we have not settled with these people of Swain County in all of these years. We have done them an injustice and no wonder they are mad about it.

I think that goes to the heart of this bill. This county, deprived of its land, deprived of a great deal of its tax base, has been waiting now for years and years for a cash settlement that is properly provided in this bill. I think we can wait no longer.

For those who worry about the park somehow being changed and people somehow not being able to get in, I simply would remind them that all of the area to be designated wilderness has been treated as a wilderness for many years. So nothing will change in the way that the people can use it, the access to it, the availability of campsites; the right to go in and come out will be the same after the bill is passed as it was before.

So it is a great piece of conservation legislation, but beyond that the point I want to make is we have too long been unfair to the school children of Swain County, whose school system will benefit if we pass this bill.

Mr. President, it is time to protect this great wilderness area. It is time to settle this 45-year-old dispute. Let us allow this issue to be heard in the Senate.

I thank you and I yield any remaining time back.

The PRESIDING OFFICER. There is no remaining time.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2 p.m.

Thereupon, the Senate, at 12:45 p.m., recessed until 2:01 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. MELCHER].

CLOTURE MOTION

The PRESIDING OFFICER. The clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of H.R. 1495, an act to designate certain lands in Great Smoky Mountains National Park as wilderness, to provide for settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, and for other purposes.

Senators Terry Sanford, Jeff Bingaman, Bob Graham, Barbara Mikulski, Wyche Fowler, John Melcher, Carl Levin, Don Riegle, Jim Sasser, Paul Sarbanes, Tom Harkin, Max Baucus, Bill Bradley, Jay Rockefeller, Daniel Inouye, Dennis DeConcini, and Tom Daschle.

VOTE

The PRESIDING OFFICER. By unanimous consent the quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of H.R. 1495, an act to designate certain lands in the Great Smoky Mountains National Park as wilderness, to provide for settlement of all claims of Swain County, NC, against the United States under the agreement dated July 30, 1943, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Louisiana [Mr. JOHNSTON] is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Oklahoma [Mr. BOREN] are absent because of illness.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] is necessarily absent.

The PRESIDING OFFICER (Mr. SANFORD). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 54, nays 42, as follows:

[Rollcall Vote No. 195 Leg.]

YEAS—54

Adams	Exon	Mikulski
Baucus	Ford	Mitchell
Bentsen	Fowler	Moynihan
Bingaman	Glenn	Nunn
Bradley	Gore	Pell
Breaux	Graham	Proxmire
Bumpers	Harkin	Pryor
Burdick	Heflin	Reid
Byrd	Hollings	Riegle
Chafee	Inouye	Rockefeller
Chiles	Kennedy	Roth
Cohen	Kerry	Sanford
Conrad	Lautenberg	Sarbanes
Cranston	Leahy	Sasser
Daschle	Levin	Shelby
DeConcini	Matsunaga	Simon
Dixon	Melcher	Stennis
Dodd	Metzenbaum	Wirth

NAYS—42

Armstrong	Hecht	Pressler
Bond	Heinz	Quayle
Boschwitz	Helms	Rudman
Cochran	Humphrey	Simpson
D'Amato	Karnes	Specter
Danforth	Kassebaum	Stafford
Dole	Kasten	Stevens
Domenici	Lugar	Symms
Evans	McCain	Thurmond
Garn	McClure	Trible
Gramm	McConnell	Wallop
Grassley	Murkowski	Warner
Hatch	Nickles	Weicker
Hatfield	Packwood	Wilson

NOT VOTING—4

Biden	Durenberger
Boren	Johnston

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are

42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business and that Senators may speak therein, and that the period not extend beyond 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I thank the distinguished majority leader for allowing me to speak at this time, and I will not exceed my 8 minutes.

CONSULTANTS IN THE PENTAGON

Mr. PRYOR. Mr. President, last week, as a result of a hearing in my Subcommittee on Federal Services on the wild growth and lack of control over the consulting community, I announced that I would offer amendments to all of the pending appropriations bills to control the dark side of Government—the unseen consultant side of Government.

I will begin the process of identifying and cutting back consultant costs with an amendment to the Treasury, Post Office appropriations bill when it comes to the Senate floor later today, tomorrow, or sometime this week.

Mr. President, before we get to the Treasury bill and my cost control amendment, I want to take a moment to release new data, given to me this afternoon, 2 hours ago, by the GAO on the amount spent on defense consultants by the Pentagon—or, I should say, the American taxpayer.

This is timely, in light of the consultant scandal that is ravaging the Pentagon and the administration today.

As part of my subcommittee's investigation into consulting activities governmentwide, I asked the General Accounting Office to provide me with data on what the Pentagon is spending on consultants.

Just 2 hours ago, the results of GAO's audit were presented to me.

Mr. President, in fiscal year 1987, the Pentagon reported spending $155 million on consultant contracts. The GAO today reports that during last year, the expenses that were definitely attributable to Defense consultants actually totaled $2.8 billion—18 times the amount reported by DOD—and that the expenses that could be attributed to consultants within the DOD totaled $18 billion—120 times the amount reported by DOD.

Mr. President, some people seem to be interested in keeping this shadow government under wraps.

I ask unanimous consent that the text of this GAO summary be printed in the RECORD following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PRYOR. Mr. President, the Defense Department's own Inspector General has made similar findings. For example, in 1983, the Army reported spending $23,000 on consultants. However, according to the IG, the Army actually spent $2,764,000 on consultants. The Army estimate was 12,000 percent off.

The DOD obviously has been using a very narrow definition of the term "consultant" in reporting these figures. The $18 billion figure includes management reviews, technical assistance, special studies, management and support services for research and development and professional services.

But even that astronomical figure still does not show us the "dark side of the Moon" as far as consultant expenses are concerned. We still do not know or have any idea of how much the Pentagon today has built embedded costs into contracts for consultants and consulting activities within contracts. These embedded costs are consultant costs hidden in a larger contract, such as for the procurement of an aircraft, a tank, a submarine, or a missile system. We also know that, ultimately, these embedded costs, hidden or not, are paid by the taxpayers of this country.

Many press reports last week explained how former DOD officials go to work as consultants to large defense contractors. I am saying that it is possible that under Defense procurement procedures, the costs of many of the hefty payments made to these individuals and companies are embedded, or hidden—they are not seen on the surface, they are not reported, they are not monitored—in contracts that defense companies have with the Pentagon.

The DOD Inspector General says that embedded consultant costs should be identified and counted separately. Procurement people continue to disagree. I strongly agree with the Inspector General of the Department of Defense that these costs should be identified, out in the open, and counted separately.

Mr. President, who are these shadowy figures clinging to the Pentagon's coffers? Where do they come from? How many are there and how much are they paid? What controls do we have over their activities and whether they can retain high level security clearances? And what can we do to prevent further fraud and waste by consultants who may want to take advantage of their highly privileged situation?

These are some of the questions that my subcommittee on the Governmental Affairs Committee is going to investigate and hold hearings on in the weeks and months to come.

Most of all, we will try to focus the light of public scrutiny on the hidden corners of government—on the "dark side of the Moon." We will attempt to discern the problems and craft solutions.

Mr. President, the Pentagon is going to be undergoing a tremendous amount of embarrassing scrutiny in the days and months to come, in court, in the media, and in Congress. To be fair, however, we should not lose sight that DOD is not the only department that relies heavily on consultants. Nor is it the only department where there is a potential for fraud and abuse by those consultants and those firms.

Finally, we should keep in mind that some of the consultants out there are honest and have a legitimate job to do. The taxpayers of America should have no quarrel with these people. But we do have a quarrel with those consulting firms who trade on their cozy relationships in the most profitable "buddy system" in the world today, with Government officials, to win high-priced contracts that waste money or might otherwise go to better qualified companies or stay within the Government.

Mr. President, this is what we will be looking into and seeking to prevent in the future. I look forward to working with my colleagues on these very difficult and important problems.

Once again, as I did last week, I am serving notice that on each of the pending appropriation bills that will be coming before the U.S. Senate, I will attempt, not only to cap the number of consulting dollars that are being spent, but also to actually reduce the amount spent on consultants.

EXHIBIT 1

GOVERNMENT WIDE SUMMARY OF ESTIMATED FISCAL YEAR 1987 CONSULTING SERVICES OBLIGATIONS BY APPROPRIATION BILL

[In thousands of dollars]

Appropriations bill	4 categories[1]	7 categories[2]	Total
Defense/Military Construction	2,804,331	15,945,932	18,750,263
HUD	255,767	355,569	611,336
Labor	127,451	226,877	354,328
Foreign Operations	295,781	49,376	345,157
Energy	193,832	73,741	267,573
Transportation	227,807	21,864	249,671
Commerce	127,401	48,116	175,517
Interior	46,730	17,413	64,143
Agriculture	29,362	14,322	43,684

GOVERNMENT WIDE SUMMARY OF ESTIMATED FISCAL YEAR 1987 CONSULTING SERVICES OBLIGATIONS BY APPROPRIATION BILL—Continued

[In thousands of dollars]

Appropriations bill	4 categories[1]	7 categories[2]	Total
Treasury	28,770	8,974	37,744
Total	4,137,232	16,762,184	20,899,416

[1]Categories that involve consulting services.
[2]Categories that could involve consulting services.

Mr. PRYOR. Mr. President, once again, I sincerely thank the majority leader for allowing me this opportunity to speak.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business for not to exceed 10 minutes, Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

THE DROUGHT

Mr. CONRAD. Mr. President, first I want to thank the majority leader for making this time available.

Mr. President, I have just returned from my home State of North Dakota, where a number of other Senators and I, along with the chairman of the Senate Agriculture Committee, Senator LEAHY, took a tour of drought-affected areas of South Dakota, North Dakota, and Montana.

Mr. President, I want to thank the chairman of the Senate Agriculture Committee for taking the time to come to my State as well as the neighboring States of South Dakota and Montana, to see firsthand how serious the situation really is. I can not emphasize strongly enough the economic disaster that we face in the heartland. This trip provided dramatic testimony as to how desperately serious the situation really is.

I had been in my home State just 2 weeks ago. It was bad then. It is far worse now. The pastures in my State are like a moonscape. They never emerged from their winter dormancy. There is nothing in the pastures. The wheat fields will yield little if anything in this crop year.

We went into a wheat field south of the capital city of Bismarck, ND. The wheat is standing 4 inches tall when at this time of year it should be 2 feet tall. Four inches tall; and heading out, Mr. President, you could run a combine back and forth over those fields and you would not get a single bushel to harvest.

We are faced with an economic calamity, unmatched since the Great Depression. In my State, wheat, barley, and oat crops are already over half gone. If the skies opened up today, we will still lose over half of our crop. And with each passing day the situation becomes more grave.

The pasture conditions are the worst since they started keeping records in 1922. That is 66 years, and nothing equal to this in all of that time.

The economic effects on my State, Mr. President, have been estimated by North Dakota State University, the school that headquarters our agricultural economic experts, to be $2.7 billion. That is on a total gross State product, Mr. President, of just under $10 billion. Twenty-seven percent of our gross State product at risk. That is the magnitude of the disaster that we confront.

Immediate steps must be taken. We must, first of all, guarantee a level of deficiency payments to our farmers. It is a perverse result of the 1985 farm bill that as farm prices rise as a result of this drought, deficiency payments go down. So at the very time farmers do not have bushels to sell, they are also faced with an evaporating deficiency payment. Mr. President, that spells absolute economic disaster unless the Federal Government moves to help. That is what we face in my State.

In addition, Mr. President, we must have some form of disaster payment because, even if we got the deficiency payments equal to $1.50 or maybe $1.60 a bushel, we would be left with the shortfall between that and $4 or $4.50 a bushel that we would get under normal conditions.

Mr. President, a guaranteed level of deficiency, disaster payments, these are critical for just basic survival. In addition to that, we need immediate help for the livestock producers of our State. What has been done so far is not enough. It is just not enough, Mr. President. We asked for the opening of CRP acres and the opening of waterbank acres for haying and grazing. So far all we have obtained is the CRP acres opened for haying.

Mr. President, it is not enough. It is simply not enough. Our cattle are being sold in numbers that are 5 and 10 times what is normal. If we do not have immediate assistance that provides for haying and grazing of CRP and waterbank acres many ranchers and dairymen will be forced to sell their foundation stock. In addition to that, we need the Secretary of Agriculture to immediately implement the emergency feed assistance program which will allow farmers to buy from CCC inventories at 75 percent of the loan rate so they can feed livestock—if we do not find a feed source, they are going to send their cattle to slaughter. Mr. President, the result of that would be to sharply reduce cattle prices in the short term and to dramatically increase prices in the long term.

It is not just the rural areas that are on the line in this drought. No, it will not be just the rural areas that pay a price. It will be this entire country that pays the price.

In addition to the measures I have already outlined we should also, under the authority of the Secretary, immediately proceed to allow producers to extend all CCC loans instead of a continued callup of the farmer-held grain, which puts pressure on the farmers to give up the grain they have in inventory, letting that grain go to the Federal Government, ultimately the large grain traders Mr. President, if we do not act, then that grain will move out of the farmer's hands into the large trader's hands, and they will reap the bonanza of the increasing prices as a result of this drought.

(Ms. MIKULSKI assumed the chair.)

Mr. CONRAD. Let me conclude, and I acknowledge we have now had a change in the Presiding Officer.

Madam President, it is good to have you here. I am just concluding my review of what we saw in my State this weekend. The drought is the most severe that we have seen in anyone's lifetime in my State; an absolute disaster. We are faced with an economic collapse unparalleled since the Great Depression. We are calling on the Federal Government for help because there is no other way.

If my State is to survive economically, the Federal Government must move and move decisively to assist us. That is the difference between an economic collapse and survival. It is just that simple.

So, Madam President, tomorrow, along with my colleagues from other drought-affected States, we will be meeting with the drought task force to outline what is needed and what is needed now.

I urge my colleagues to be sympathetic, to have an open ear and to pay some attention because I can assure my colleagues this drought is so severe and so dramatic that all of us will be affected.

Tomorrow we will outline those things that must be done swiftly by the Federal Government if we are to avert an economic collapse in my State and the neighboring States of South Dakota, Montana, and, as I now understand, all the way to the southeastern part of the United States. We will outline the steps that must be taken by

the Federal Government to avert that kind of collapse.

I want to, once again, publicly thank the chairman of the Senate Agriculture Committee. He could have been at his own farm in Vermont this weekend. I have been there. It is a beautiful spot. He could have been there with his family over the Father's Day weekend. Instead, he chose to come to our States to see first hand how serious the situation is.

As the chairman was getting back on the airplane to leave North Dakota, he said to me: "Senator, you have been telling me how serious this drought is. You have been telling me over and over." He said, "I knew it was serious. I had no idea it was this desperate."

Madam President, I ask unanimous consent at this point in the RECORD that an article that appeared in the State newspaper last week entitled "Dust Bowl on Horizon?" be printed in the RECORD.

In addition, Madam President, I ask unanimous consent that an additional newspaper article entitled "N.D. Drought Toll, $2.7 Billion To Date" be printed in the Record at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

DUST BOWL ON HORIZON?

(By Patrick Springer)

Rain—substantial rain—within the next five days to two weeks is crucial to salvage parched crops in the Red River Valley and many areas of North Dakota.

But the extended forecast issued Thursday calls for a resumption of sizzling temperatures with only a slight chance of rain this weekend.

Meanwhile, as grain markets reacted to the continuing drought and crop reports came in, the dimensions of what some are calling the worst drought since the Dust Bowl were becoming evident:

Futures prices on the Minneapolis Grain Exchange, which shot up the maximum 20 cents Monday, have continued to rise slowly. The high prices reflect widespread anxiety that grain supplies will be reduced by the drought.

A federal crop report issued Thursday rated average pasture and range conditions in North Dakota as only 38 percent of normal on June 1—the lowest ranking in the country and the state's worst since 1980.

A North Dakota Wheat Commission spokesman predicted Thursday that total hard red spring and durum wheat will be no more than 150 million to 170 million bushels—100 million bushels less than normal. "And that is probably optimistic," Mel Maier told The Associated Press.

For sugarbeets in the Red River Valley, the next five to 10 days will determine whether many farmers will get a good crop or only a fair crop, said Ron Hays, president of American Crystal Sugar.

Chances of a repeat of the bumper, 6.4-million ton sugarbeet crop of 1987 have long since evaporated; 140,000 acres have been replanted—some for the third or fourth time.

For the last two weeks, many surviving sugarbeets have been dormant due to a lack of moisture, which stifles yields.

The situation is serious from Grand Forks, N.D., south, Hays said. In dry, replanted fields where the tips are just emerging from the soil, the situation is dire. "Hell, those fields are nothing," he said.

Still, Hays tries to be optimistic. "If we lose 25 percent of what we have it's not the end of the world, but it's not good," he said. "I'm not preaching gloom and doom."

Nonetheless, the outlook for many small grains throughout most of North Dakota and much of northwestern Minnesota is gloomy unless significant moisture falls within the next five to 10 days, crop experts agreed.

The moisture window for row crops is longer—up to two weeks, according to many estimates.

"We're to the point now if it doesn't rain soon even the row crops that are already planted may not make it," said John Enz, an agricultural climatologist at North Dakota State University.

Even if good rains come along, small grain yields will be greatly reduced because of stunted plants crippled by the coinciding low rainfall, high winds and abnormal, 90-plus temperatures. The hot temperatures are as damaging as the lack of rain, increasing the need for moisture.

"We've already lost a lot of our yield potential," said Dallas Peterson, an NDSU agronomist. "The next five to 10 days are going to be very critical" for small grains; the next 10 to 14 days for row crops.

Roger Johnson, an agricultural economist at NDSU, said high grain prices could help offset losses farmers face from the drought—but he quickly conceded that is little concession for farmers unable to harvest a crop.

"Some people say that doesn't do any good unless you've got any yield," Johnson said of the high prices on grain markets. Still, "that's got to be somewhat of an offsetting factor."

Comparisons of the present drought to the dry years of the 1930s are premature, said Enz.

Moisture levels are below normal for most of North Dakota, with the worst areas in the northwest and southeast corners.

Fargo, one of the wettest areas, is experiencing the eighth driest September-May period on record, with 7.74 inches; the average is 11.47 inches. How does that compare with the 1930s? It was drier in 1934, when 7.31 inches were recorded, but wetter in 1936, with 8.20 inches. By contrast, the September-May period for 1979-80 was much drier—6.61 inches.

The difference, according to Enz, between the 1979-80 drought and the dry years of the 1930s: good rains fell during the growing season, salvaging crops.

The National Weather Service forecast for the Fargo area calls for highs in the mid 80s today and in the 90s Saturday, with breezy conditions and a 20 percent chance of thunderstorms.

"Your chances are rather slim for getting rain in any one spot" forecaster Bob Andersen said "The key word is still hot."

As a climatologist, Enz shied away from making a forecast. But he did say that weather patterns tend to hang around.

"It looks awfully dry," he said. "Dry weather tends to persist, more so than other weather."

[From the Grand Forks (ND) Herald, June 16, 1988]

N.D. DROUGHT TOLL $2.7 BILLION TO DATE

(By Stephen J. Lee)

The drought already has cost North Dakota $2.7 billion, according to estimates of extension specialists at North Dakota State Univeristy.

That was the economic impact on the state as of 10 a.m. Tuesday—even if the rest of the summer is good for crops, according to livestock specialist Harlan Hughes, one of a dozen extension economists and agronomists who participated in the study.

"There will be a significant employment loss," Arlen Leholm, who headed the study, said. But he could not provide a number. He said that if such losses were sustained for several years, it could mean a loss of 28,000 jobs in the state, Leholm said.

Farmers get their income from two main sources—crop sales and government subsidies. The drought is drying up both sources, Hughes said.

NDSU agronomists figure that about 55 percent of the wheat and barley crops, and about 65 percent of the oats crop is gone. Row crops are in better shape.

Even with sharply higher recent grain prices, that figures to be a loss of direct cash from crop sales to the state's farmers of about $500 million, Hughes said.

The loss of that much spending in the economy by farmers will have an indirect impact of another $1 billion, the study concluded.

Meanwhile, government payments will be drastically reduced because they are pegged to make up for low market prices. Market prices have risen to the highest levels in years as the drought shrinks this year's supply of grain.

That means the "deficiency payments"—which are set to make up the difference between average market prices and a congressionally set target price—to farmers from Uncle Sam will be much lower than last year. The payments have become a major part of farm income in recent years, making up 30 to 50 percent of most farmers' incomes.

But Leholm said that current prices indicate that farmers will not receive any more of their 1988 deficiency payments. If prices go higher, they may have to pay back some of the advance payments made this spring when farmers signed up for the farm program.

That means North Dakota farmers will be out $400 million in deficiency payments this year, the NDSU study concluded. The indirect impact of that loss on the economy is another $800 million, Leholm, an NDSU agricultural economist, said.

"Even if rains do come now, there just won't be any wheat, barley or oats crop," Leholm said on ABC-TV's "Good Morning America" program, according to The Associated Press. Leholm spoke from a wheat field near Napoleon, N.D.

"It'll devastate the state," he said. "I'd anticipate a second wave of farmers will go under. We lost a lot of farmers to the very poor prices. Now, the drought will cause another wave of farmers to not make it . . . and many of those farmers are young, and it hits Main Street just as hard. On Main Street, it's going to really hurt all through the Plains states:"

The study did not include any losses to livestock producers, who may be forced to sell off their herds, or pay extra money for more expensive feed, Hughes said.

The analysis was prepared at the request of North Dakota Sen. Kent Conrad, who used the numbers in a Senate Agriculture Committee meeting with Secretary of Agriculture Richard Lyng on Tuesday, Hughes said.

Lyng made no promises of federal drought aid.

Conrad has invited Patrick Leahy of Vermont, chairman of the Senate Agriculture Committee, to tour North Dakota. Montana and South Dakota Saturday. North Dakota Sen. Quentin Burdick and Rep. Byran Dorgan are scheduled to join the tour.

Mr. CONRAD. Madam President, again, I want to thank the majority leader for this time, and I want to especially thank the chairman of the Senate Agriculture Committee for taking the time to come and see first hand for himself how desperate the situation is. I yield the floor.

THE PROCUREMENT SCANDAL

Mr. DIXON. Madam President, as a member of the Senate Armed Services Committee, I am deeply concerned with the revelations of yet another procurement scandal at the Department of Defense and the Department of the Navy. You all know the history better than I. Disclosures of $800 toilet seats and $400 hammers, were followed by reports of shoddy workmanship resulting in critical weapon systems that couldn't perform their missions. Further scandals involving massive cost overruns, and defective equipment throughout the military inventory jeopardize our readiness and ability to sustain ourselves in wartime. The common thread throughout is poor managment and leadership at the highest levels of the DOD.

I am the author of several important pieces of legislation that were designed to correct the deficiencies in the acquisition practices of the Defense Department. I introduced the legislation that created the Office of the Under Secretary of Defense for Acquisition. I wanted this office to be responsible for supervising the entire defense acquisition system, but the services resisted this essential reform. The Congress nonetheless authorized very direct and explicit responsibilities and duties for this position, but the Defense Department continued to resist necessary change.

When Richard Godwin resigned as the first Under Secretary of Defense for Acquisition in September 1987 he cited his associates and superiors lack of recognition of his authority over the acquisition and procurement process with the DOD. I have trusted in the assurances of the current leadership of the Defense Department that Mr. Godwin's successor will be allowed to exercise the full authority of that office as Congress directed. We will have to wait for the full story to unfold to know if the problems all occurred in the past before the Office of USDA was in full operation, or if they continue to this day.

In addition to the legislation creating the USDA, I sponsored amendments to last year's defense authorization bill that addressed other major issues that required review and correction. Both these amendments relate to reform of the defense procurement process, and I am sad to say they were opposed by elements within the Department who are now subjects of the investigation into procurement abuses. The first of these amendments clarified the appropriate relationship between the U.S. Government and its contractors and subcontractors involving technical data rights. The second amendment involved the appropriate policy for procuring production special tooling and production special test equipment. The key to this provision was that the Secretary of Defense was directed to issue regulations that are to be applied uniformly throughout the Department of Defense. I believe that the fair and evenhanded application of all defense policies and regulations, especially involving the complex world of acquisition, is essential to the elimination of abuses in the procurement process. This approach has been the essential driver behind the reforms I have proposed.

The key points of new legislation on the DOD procurement process are: It centralizes the authority and responsibility for the procurement process in the Office of the Under Secretary of Defense for Acquisition.

This would remove the procurement management decisions from individuals with vested interest in its outcome. The services will continue to determine what to buy, while the USDA will determine how to buy it. The USDA establishes procurement policy and directs its uniform implementation and promulgation to each of the services. This will enhance the oversight function by setting up a system of checks and balances between the services and the Under Secretary

The senior acquisition executives in each service will be appointed by the Secretary of Defense, in consultation with the Under Secretary of Defense for Acquisition, and subject to confirmation by the Senate. They will report to the USDA. They will be given responsibilities within the services paralleling the authority of the USDA.

Legislation will be proposed establishing parameters for contractors, consultants and Government personnel involved in the procurement process. This is intended to eliminate ambiguity and gray areas in dealings between contractors and Government procurement officials.

I will continue to push for procurement reforms as I have in the past. We cannot allow the corrective measures that I and my colleagues have labored long and hard on to be shunted aside in favor of "business as usual" practices. I will therefore sponsor new legislation to strengthen the role of the Under Secretary of Defense for Acquisition. The main intent of this legislation is to establish the Under Secretary of Defense for Acquisition as a true procurement czar within the DOD. We must centralize authority and responsibility for acquisition policy in a single office. The Armed Services Committee must hold hearings on the procurement practices of the DOD as soon as practicable. We cannot legislate against greed and corruption. There will always be some individuals who will put personal gain above all else. However, we must do everything possible to correct the inherent inefficiencies of the current system and to reduce the potential for abuse. We must eliminate the outlaw mentality that appears to prevail in some services, where rules and laws appear to have been made to be broken. The intent and letter of the law must be allowed to prevail over expediency and personal gain.

Mr. BYRD. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection it is so ordered.

RECESS

Mr. BYRD. Madam President, I ask unanimous consent that the Senate stand in recess for 10 minutes.

There being no objection, the Senate, at 3:14 p.m., recessed until 3:24 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Ms. MIKULSKI].

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The distinguished majority leader.

MOTION TO PROCEED TO THE CONSIDERATION OF S. 430, RETAIL COMPETITION ENFORCEMENT ACT

Mr. BYRD. Madam President, I have several different possibilities for the Senate this afternoon.

I move that the Senate proceed to the consideration of Calendar Order No. 525. That is the vertical pricing bill.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The distinguished minority leader.

Mr. DOLE. Madam President, I understand, and I have discussed this with the distinguished majority leader, there will be, starting with the

distinguished Senator from South Carolina, a number of speakers on the motion to proceed, and then perhaps a rollcall vote after we have had some debate on the motion to proceed. I think that is satisfactory with the majority leader.

Mr. BYRD. Yes. I want to thank the Republican leader also because he has been very cooperative in the effort to try to find something to go to this afternoon. There are several possibilities. This seems to be the one for the moment which is the most promising.

I was apprised that there would be an objection to going to it. Therefore, the motion to proceed is necessary. That motion has been made. I hope we can have a vote on it during the afternoon.

TREASURY-POSTAL SERVICE APPROPRIATIONS ACT, 1989

ORDER OF PROCEDURE

Mr. BYRD. Madam President, while the distinguished Republican leader is here, I ask unanimous consent that in the event the Senate should be in a position to proceed to the consideration of the Treasury-Postal Service bill today that the 2-day rule be waived.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I thank the able leader on the other side of the aisle.

I yield the floor.

RETAIL COMPETITION ENFORCEMENT ACT

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Madam President, I rise in opposition to the motion to proceed to S. 430, the Retail Competition Enforcement Act of 1987. This bill reverses the Supreme Court's 1984 holding in Monsanto versus Spray-Rite Service Corporation, and codifies the per se illegality standard for vertical price fixing. I am opposed to S. 430 because the Monsanto decision should not be reversed and it does not need clarification. S. 430 will not help consumers nor is it necessary to protect discount operations in this country. Finally, although I believe that vertical price fixing should be per se illegal, I am opposed to codifying the per se standard and forever barring judicial review of this issue.

In Monsanto, the Supreme Court held that a conspiracy to set vertical prices is not established by proof that manufacturer terminated a distributor following, or even in response to, price complaints by other dealers. The Court held that, "[S]omething more than evidence of complaints is needed. There must be evidence which tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently." I agree with the Supreme Court's holding in Monsanto. What the Court did was to develop an evidentiary standard that balances the Colgate principle of unilateral conduct against the use of circumstantial evidence to prove a conspiracy to fix resale prices. The Colgate case, as my distinguished colleagues will recall, holds that a manufacturer has the right to deal with whomever it wishes as long as it does so unilaterally. In my view, if we allow the existence of price complaints to be the only basis for a finding of a conspiracy, even if the dealer termination is in response to the complaints, we tip the scale against Colgate and erode a principle that has been one of the main foundations of antitrust law for many years.

The issue of resale price maintenance and vertical price fixing is an intersting one for me because I was strongly in favor of enacting the Consumer Goods Pricing Act in 1976, which repealed the "fair trade laws". While discounting retailers provide a benefit to consumers, I am not convinced that consumers will benefit from S. 430. I believe that this bill will cause an unnecessary increase in expensive and time-consuming litigation, the cost of which will ultimately be passed on to the consumer. Should this legislation be enacted, distribution networks will become inefficient and more costly because of manufacturer's fears of terminating an inefficient distributor, and manufacturers will be much less willing to deal with discounters in the first place.

Those who support this legislation argue that unless S. 430 is enacted, discount stores will be driven out of business. The facts indicate otherwise, however, and demonstrate that discount stores are flourishing. According to recent statistics, there are some 57 publicly traded discount companies, including K-Mart, Wal-Mart, Federated Department Stores, and Burlington Coat. From 1985 to 1986, discount store openings increased by 2.3 percent and sales increased by 6.3 percent. According to Discount Merchandiser, a trade publication, "[i]n terms of dollar volume, discount stores are the largest retailers of housewares and gifts, infants' wear, domestics, toys, small electrics, stationery and greeting cards. They are the second leading retailers of cameras and photo supplies, sporting goods and luggage, lawn and garden supplies, automotive accessories, and consumer electronics."

S. 430 would also codify the per se rule against resale price maintenance. Although I believe that resale price maintenance should be per se illegal, codifying this rule is neither useful nor effective. In recent years, there has been increasing criticism of the per se nature of the Dr. Miles rule against resale price maintenance. It has been argued that resale price maintenance, in some circumstances, may promote interbrand competition. It may enable a manufacturer to create attractive and inviting stores and showrooms. It may enable dealers to train sales personnel to provide technical advice and assistance to customers regarding complex or new products. Resale price maintenance may also deter some dealers from taking a "free ride" on other dealers' sales efforts. Economists have identified other reasons, which may be procompetitive, why a manufacturer might want to impose resale price maintenance. In view of this debate, this hardly seems the time to be locking in the rule against resale price maintenance. The courts should not be hamstrung this way.

The Monsanto decision was not reached simply by a majority of conservatives on the Supreme Court. Rather, with the exception of Justice White, who did not participate in the decision, Monsanto was decided by a unanimous court. There were no ideological differences between the Justices as to antitrust law, the law of conspiracy, or the evidentiary requirements necessary to prove a conspiracy. I would strongly urge all my colleagues to vote against the motion to proceed to S. 430, to allow the Monsanto decision to remain undisturbed, and to allow the courts, as they have always done, to fashion a per se standard where appropriate.

Madam President, I suggest the absence of a quorum.

Mr. METZENBAUM. Madam President, will the Senator from South Carolina withhold that?

Mr. THURMOND. Yes.

Mr. METZENBAUM. I ask my colleague whether he is putting in a quorum call in order that he may continue further with his opening statement.

Mr. THURMOND. There are some other speakers who are interested in this matter, and I want to give them a chance to speak.

Mr. METZENBAUM. Will the Senator indicate, so that we may advise others, whether he thinks we will be able to move forward this afternoon with the motion to proceed?

Mr. THURMOND. I cannot say how the vote will turn out. We are opposed to proceeding on the bill.

Mr. METZENBAUM. I respect the Senator's right to oppose the bill and his right to oppose the motion to proceed. My question is this: Would the Senator be willing for us to move forward on the motion to proceed and then debate the merits of the legislation after we get on the bill?

Mr. THURMOND. A number of Senators are so strongly interested in this bill that they even oppose the motion to proceed. I think there are 14 or 15 Senators who want to speak against the motion to proceed.

Mr. METZENBAUM. We have a large number of cosponsors on the bill. We have Senators RUDMAN, SIMON, and BRADLEY, who were the original cosponsors; and we have Senators DECONCINI, GRASSLEY, SPECTER, HUMPHREY, KENNEDY, PROXMIRE, DODD, FOWLER, WEICKER, MOYNIHAN, DURENBERGER, EXON, MIKULSKI, GLENN, KERRY, GORE, SASSER, LAUTENBERG, FORD, BINGAMAN, LEVIN, BOSCHWITZ, PELL, ROCKEFELLER, and ADAMS.

There are a large number of cosponsors, and I am prepared to speak to the subject, but if others want to speak, although I am also prepared to move forward with the motion to proceed, whatever is accommodating to the Senator.

Mr. THURMOND. Madam President, the distinguished Senator is welcome to go ahead and speak. There are some others who are coming over to speak. I have a list here of at least five who are coming over to speak as soon as they are able to get here. So he can go ahead with his speech.

Mr. METZENBAUM. This bill, more properly known as the consumers' rights bill, is probably as important a piece of consumer legislation as any that we will deal with in the session.

It has to do with a very basic and fundamental right, and that is the right to buy at less than the manufacturer's suggested retail price. It has to do with the right to buy in discount stores at as much as 30 percent off on clothing, 18 percent off on toys, and 20 percent off on electronics.

We have studied the issue. We sent people out in the field to make purchases. We know that as a fact that the ability to go out and shop at a discount operation does save the consumers money, and this bill protecting the rights of the consumers which we are particularly concerned about, can save the consumer on the average over $500 a year.

It concerns the prices that consumers pay and the choices that they have to make when they shop in a discount store. This is a compromise bill. It has worked out with bipartisan support.

I thank our colleagues on the Judiciary Committee for their cooperation and some who are not on the Judiciary Committee. Senators RUDMAN, BRADLEY, and SIMON who was on the committee. Chairman BIDEN provided us with expeditious committee consideration. Senators DECONCINI, GRASSLEY, LEAHY, SPECTER, HUMPHREY, and KENNEDY were a great help in the committee. The bill has two parts. First, it would establish a fair standard of evidence that if met would guarantee the plaintiff can reach the jury. It does not mean much to have a case if you cannot get the case to the jury. And under the recent Supreme Court decision and some previous decisions there is a question about the right to bring the case before the jury.

This bill would codify a 75-year-old rule that vertical price fixing is per se, that means automatically, illegal.

Vertical price fixing has to do with the manufacturer and the retailer agreeing to set resale prices. There is no reason for that. If you believe in the free enterprise system, if you believe that free competition should work, if you believe that people ought to be able to sell and buy in the free enterprise system with free competition, then you have to be for this bill. But if you think some manufacturers and retailers sitting in some high luxurious office should have the right to agree on what price the consumers in South Carolina, Ohio, Maryland, North Carolina, New York, or Texas have to pay for the products they buy, then you have to be opposed to this bill.

But if you think there ought to be free competition, free enterprise, then you have to be for this bill.

There is a whole host of groups that support this: The American Association of Retired Persons, the Consumers Union, the State Attorneys General, the AFL-CIO, the Consumer Federation of America, Public Citizen, the Small Business Legislative Council, and I want to point out that group particularly, the Small Business Legislative Council, a group of people who are in business, and they think that there ought to be a right to discount; the National Council of Senior Citizens, and the International Mass Retailing Association.

The House of Representatives has passed a companion measure not by a small margin but unanimously, every Member of the House in favor of it.

Let us talk about this bill for a minute. What is vertical price fixing? It is an agreement between the manufacturer and the supplier to fix prices. Vertical price fixing eliminates the retailer's freedom to set its own prices.

Think of what we are saying. We are saying that eliminates the retailer's freedom to set its own prices. I think everyone would agree on its face that a retailer ought to be able to sell his or her product at whatever price he or she wants to sell it. But no, no. Those who oppose this bill would give the manufacturer the right to agree to set the price, to set the price of the refrigerator, the clothes, the sweater, the electronic equipment, the radio, the TV, the VCR, or the toys for the children.

Why? Why would anyone argue that a retailer should not have the right to take a lesser profit and sell at a discount? But vertical price fixing eliminates the discounter's ability to charge lower prices. Vertical price fixing prohibits consumers from shopping around to get the best price for their products.

This bill prohibits vertical price fixing. It also establishes a fair evidentiary standard for vertical price fixing cases. That is sort of technical language—evidentiary standard for vertical price fixing cases. In sum and substance that means how much evidence you have to have in order to get the case to the jury.

If you cannot get your case to the jury you cannot make out a case. Currently, there is considerable confusion in the lower courts. Let me give you an example of the evidence a court would not let a jury see in some cases heretofore decided. A high-price store competing with a discounter tells the manufacturer its goods are going in the bargain basement and it is not invited to the store's trade show. The manufacturer then writes a letter to the high-price store saying that the discounter's lower prices are a situation that should not exist and which exists due to a mistake on its part. The letter promises to make every effort to see that the situation is rectified. The official from the high-price store tries to destroy all copies of the letter, hide the evidence, and the discounter is cut off by the manufacturer.

Sad to report the court refused to let the jury consider this damaging evidence of anticompetitive conduct.

The bill contains specific guidelines on when a jury gets to consider the case.

The bill does not guarantee that the plaintiff wins nor would I ever come forth with a piece of legislation to guarantee that the plaintiff wins. But give the plaintiff, give the consumer, give the retailer who is cut off a right to get his or her case to the jury.

The bill maintains the current rules of civil procedure in conspiracy law. The bill preserves unilateral right of business to deal with whomever it wants.

And then there is a second part of the bill. The second part of the bill codifies a 75-year-old rule that vertical price fixing is per se illegal.

Vertical price fixing equals an agreement between the manufacturers and the retailers to set, change, or maintain resale prices.

Since 1911 the Supreme Court construes our antitrust laws to absolutely prohibit vertical price fixing. Now some want to change this rule. Why would they want to do that? What could be more consistent with free competition and free enterprise than permitting the prices to flow freely in the marketplace?

This is not a Republican issue; this is not a Democratic issue. This is not a liberal issue or conservative issue. It is an issue having to do with what is

right and fair in the free enterprise system.

My staff did a survey in Ohio and they found that there is an average of about $550 per family per year from discount shopping—on average a saving of 30 percent on clothes, 22 percent on electronics, 18 percent on toys.

The Supreme Court has reaffirmed the rule that I mentioned just recently, but they severely cut back on the scope of the rule in a case decided in May of this year, the so-called Sharp decision.

In the Sharp decision, the Supreme court found that the agreement between the high-priced store and the manufacturer to cut off a distributor because it is charging low prices is not automatically anticompetitive. I have difficulty in understanding that, I might say. It is hard to imagine a more anticompetitive agreement. The case has already hurt discounters.

Just the other day I was visited by furniture discounters from North Carolina and those furniture discounters from North Carolina told me that competing high-priced retailers are pressuring the manufacturers to squeeze them out of business. They say as a result they are prohibited from selling to customers not physically present in the showroom and they cannot take orders over the phone or by mail.

What great freedoms are we talking about? Telling these discounters that they cannot sell, cannot take orders over the phone, cannot sell by mail, that they have got to sell only in their showroom? I know coercion when I see it and that is it.

These North Carolina furniture dealers say their area of doing business is so restricted that they cannot make a living from their sales. It is outrageous. Why would we hear on the floor of the Senate, why would some people be rushing over to this floor in order to oppose this legislation, to be opposed to the North Carolina small business furniture dealers, to be opposed to the discounters throughout the country, to be opposed to the consumers throughout the country who want to buy at the lowest price?

Madam President, I want to tell you, frankly, there are millions of Americans who do not have $550 a year to throw away so that the manufacturer can maintain its high prices. That $550 average out to a little bit over $10 a week. That buys food. It might even buy a half a pair of shoes for a little child. It buys some clothes; $550 for a family earning $12,000 a year is about 4 percent of their total income. Yet there are people who come to this floor today and oppose this bill, for what reason I know not.

A USA Today article reveals other attempts to raise prices. Here is an article from that newspaper dated May 31.

SLASHING PRICE-SLASHERS

To stop falling prices of TVs, VCRs and other electronic gear, manufacturers say they'll cut off shipments and advertising support to retailers who drop prices too low.

"We can decide who we will do business with," says Ralph Wolfe of Panasonic, which is threatening to stop shipments to price-slashers.

Thomson Consumer Electronic—marketer of the RCA and GE lines of TVs, VCRs and camcorders—and Zenith say they'll cut ad funds to offending retailers.

Manufacturers have found that competition has forced down retail prices despite rising import costs.

Example: A low-end GE VCR that sells in some stores for $250 today went for $450 in 1986.

The manufacturers are using powers won in a recent Supreme Court ruling that says a company isn't necessarily restraining trade or fixing prices if it doesn't supply discounters.

"They want to raise prices, but I'm not so sure they will be successful," says Louis Bernucca of Highland Superstores, a 73-store Midwest chain.

Hardworking business persons are being hurt. They need this legislation to stay in business. Consumers are being hurt because they cannot shop around for the best price. Competition is restricted. What could be more anticompetitive?

Congress has repeatedly reaffirmed that vertical price fixing hurts consumers and should be automatically illegal. In 1975 Congress repealed the fair trade laws. Those laws legalized vertical price fixing. Congress found that fair trade laws hurt consumer and voted to eliminate them.

My distinguished colleague from South Carolina, Senator THURMOND, voted in favor of repealing those laws. The President of the United States gave a radio address in California at that time and supported repeal of fair trade because the law hurts consumers.

Congress has passed riders to four appropriations bill, prohibiting the administration seeking to overrule automatic illegality of vertical price fixing. We need to codify the per se rule, so consumrs can receive the full benefit of retail competition.

I urge my colleagues to support this important pro-consumer measure. If you believe in the free enterprise system, then vote for the consumers' rights bill, S. 430. And the sooner we get on with the vote, up or down, the better it will be for the consumers of this country.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. RUDMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RUDMAN. Madam President, I rise very briefly to support the pending motion to proceed. I think it is important that our colleagues recognize precisely what has happened and why the Senator from Ohio and a number of others have decided to proceed with this legislation.

For some time now those of us who have been interested in protecting the rights of consumers in this country have been under the general impression that what is termed resale price maintenance was not legal, not only under the Sherman Act but under a number of cases flowing from that act.

As a matter of fact, Madam President, back at the time that I served as attorney general of my State and then as president of the National Association of Attorneys General, the National Attorneys General Association was extraordinarily active in enforcing the view that a manufacturer could not dictate to a retailer at what minimum price those goods could be sold.

Now, that is a very important issue to American consumers because under the status of the law as we believed it was, there could be full, free, and fair competition on any product sold anywhere in the country.

The net result of that was that many stores, some known as discount stores, others as wholesale discount stores, would offer top-quality brandname goods to consumers at a substantial reduction from what they might ordinarily pay for them through in the traditional retail establishments.

In fact, I daresay that the view that resale price maintenance was not proper under the Sherman Act led to a revolution in retail marketing and retail merchandising in America. One need only go to any shopping mall in America to find that out.

What does it mean to the consumer? It means lower prices if a consumer wants to buy a particular watch or a particular brand of shirt or a television set or a personal computer or almost anything that people buy, and those are fairly costly goods—generally we are not talking about things in grocery stores and things of that sort. We are talking about appliances, clothing, jewelry, and a whole list of things.

Lo and behold, several weeks ago, the U.S. Supreme Court in a 6 to 3 decision grounded strictly on statutory interpretation—and I think it is important that everybody understand there are no constitutional issues involved here; this is a matter of statutory construction—and I will have a lot more to say about this assuming this motion to proceed is successful, the U.S. Supreme Court, decided that under a number of circumstances you could have sale price maintenance. All that

means is now manufacturer of computer X, or of wristwatch Y, or of shirt Z, can tell retailer A, B, and C, that you either sell it at so many dollars or you cannot sell it.

The net result of this is going to be, and I defy anyone to disprove this point, higher costs for American consumers. That is why we are here. I do not really understand the opposition to the motion to proceed. It is simply a matter of setting a statute right. I cannot think of too many Members of this body who are going to vote to make it necessary for consumers to pay higher prices rather than lower prices.

If I understand politics at all, I believe that most people in this body would not want to go home and tell their constituents that I voted to make you pay a higher price on every item that you buy. I just cannot believe that.

Obviously, that is why people do not want this bill to come up because they know they are going to lose. I expect in the House of Representatives the situation was the same.

This motion to proceed, as far as I am concerned, is just one step in a lengthy process because, Madam President, this bill will eventually pass the U.S. Congress. It will pass because it is the right thing to do in the interest of American consumers.

I hope that when we have this vote on this motion to proceed my colleagues will support it. We then can get into the specifics of the U.S. Supreme Court decision, the history of the law that led up to it, where we are today, some statistical analysis that I think will largely prove the case beyond any doubt, and move on to something else.

I hope on this rather warm afternoon in June in Washington that something that is as straightforward as giving the Senate a choice as to whether consumers should pay higher or lower prices should not be argued.

I am looking forward to joining in debate with a number of my colleagues who tend to believe that there ought to be no antitrust laws at all because it seems to me that this will be a pretty good microcosm, Madam President, of what people's political philosophy really is on the issue of free and open competition.

We hear so many arguments in here about free markets. We heard a lot of opposition to the trade bill because we do not want to be protectionist. We are talking about free markets for American consumers in America, largely from American manufacturers.

I certainly hope if we can get to a vote today, we can move to proceed. I thank the Chair, and I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I know this is a motion to proceed, but I rise in opposition to S. 430. It is not because I do not believe in the antitrust laws. I believe in the antitrust laws. I have been critical of this administration's efforts to enforce some of the antitrust laws because there is more of a laissez-faire atmosphere in the administration than in prior administrations, and I would normally agree with laissez-faire. Nevertheless, I think we can do a better job on antitrust.

S. 430 is not what it appears to be. It would not be a benefit to consumers. Nor would this bill concern the survival of discount stores. To the contrary, S. 430—under the guise of altering the outcome of a few court cases that went against discounters—radically alters and threatens the stability and fairness of our antitrust laws. The actual impact of this bill will be harm to consumers and uncertainty in most manufacturer-retailer relationships.

MONSANTO CASE

Although sold as a bill which merely "clarifies" a unanimous Supreme Court decision, in fact, S. 430 effectively overrules the 1984 Monsanto decision. Monsanto held that a plaintiff must present "direct or circumstantial evidence that reasonably tends to prove that a manufacturer and others had a conscious commitment to a common scheme" of price fixing. This is not a controversial holding, but a fundamental understanding that a conspiracy will not be presumed in the absence of clear evidence of wrongdoing. S. 430 undercuts that basic law in two ways: First, it invites a jury to infer an illegal conspiracy from ambiguous conduct. Second, it bases the finding of illegality upon a single event—namely a complaint from another dealer—over which a manufacturer has no control. In the absence of actual evidence of collusion on prices, a supplier should be free to engage in fair business dealings. Monsanto by the way, and I hasten to point this out, was a 9-0 Supreme Court case in 1984. I submit this is not in serious need of reversal.

As I have said, proponents of S. 430 would like to suggest that suppliers are terminating discount retailers "in response to" complaints from other retailers who fear competition with discounters. To the contrary, in the absence of clear evidence of conspiracy, the issue is whether a supplier is free to select its own customers. In this sense, S. 430 seriously erodes the validity of other Supreme Court decisions, like Colgate and Sylvania. These decisions establish first, that a manufacturer has the right to deal, or refuse to deal, with retailers as long as it does so unilaterally and not pursuant to an illegal conspiracy; and second, that all vertical restrictions, except resale price fixing, are to be judged under the "rule of reason" where illegality requires proof of actual anticompetitive effect.

Thus, even if a manufacturer unilaterally changes a relationship with a retailer because the retailer does not advertise properly or does not service the product properly or otherwise does not meet the standards of the manufacturer, S. 430 is likely to invite lawsuits and litigation that allege some kind of conspiracy.

Thus, many firms will be subjected to the considerable risk and expense of refuting allegations of nonexistent conspiracies during costly trials. Under current law, these specious claims of conspiracy have been routinely disposed of in relatively inexpensive motions to dismiss or for summary judgment. Of course, where actual evidence of conspiracy exists, the case can and does go to trial. Monsanto, contrary to some assertions, did not exclude circumstantial evidence of a conspiracy to maintain a price level amongst retailers. In fact, the plaintiffs prevailed in Monsanto where evidence of such a conspiracy was quite thin.

In the event, however, that suppliers are forced to undergo the costly and time-consuming struggle to refute otherwise groundless allegations of conspiracy, consumers will ultimately shoulder the burden in the form of higher prices. Even discounters will find that they cannot obtain products as inexpensively as before. Once again, the only real beneficiaries of this legislation will be antitrust trial attorneys and they will make exorbitant fees at the expense of consumers.

As drafted, S. 430 also harms the consumer in other ways. S. 430 condemns a variety of reasonable and lawful business practices which are often designed to encourage discounts.

JUST GET TO JURY

As I have stated earlier, this bill is not what it seems. Its proponents argue that it merely ensures that more vertical price-fixing cases will get to the jury. Access to a jury is not the issue. What is at stake are countless negotiations and countless court filings. To the extent that cases are more likely to get assigned to a jury, it will allow plaintiffs to more easily "whip saw" a defendant into premature settlement. Moreover, to the extent that more cases are likely to be assigned to a local jury in a trial against a distant manufacturer, plaintiffs are going to have incentives to file more suits on less evidence.

This is called legal extortion because what happens is that it does not take any business long to realize it is cheaper to settle it than to pay the defense costs of defending it. That is what is being done all over America today in other areas, and I do not want to have it done here because it is unfair, it is

unwise, it is unwarranted, and it is wrong, just plain wrong. This type of legislation, it seems to me, is a haven for attorneys, and antitrust attorneys at that. This legislation, it seems to me, does nothing really to benefit consumers and in fact may very well be detrimental to them.

Now, I might add that this business of forcing premature settlements or even unlikely settlements will have the effect not of promoting protection and consumer welfare but of giving dealers tremendous leverage to block replacement or termination.

DANGERS OF S. 430

In sum, this bill puts a supplier under jeopardy of a treble damage penalty on the basis of conduct of third parties entirely beyond the supplier's control. Whenever a retailer complains about another competitor—a common practice—the supplier will be foreclosed from altering its relationships with retailers without serious risk of treble damages.

Moreover S. 430 would permit a supplier to be sued for treble damages even for unilateral acts independent of any influence from other retailers. Thus a supplier could terminate a dealer because of a dirty showcase, refusal to advertise, failure to pay bills, or just failure to "get along" on a personal level, yet still be liable for treble damages solely because there are complaints from other dealers in the supplier's files.

FAIR REMEDIES

As I have repeatedly stated, this Congress ought not to tolerate actual conspiracy to fix prices. This conspiracy, however, must be established fairly by some sort of evidence, circumstantial or otherwise, that the supplier actually participated in an agreement to attain an illegal objective.

In fairness, there must be evidence that the supplier undertook termination because of an illegal agreement—not simply in response to some allegations in any kind of communication from a third party.

In fairness, this bill should preserve the principle that businesses are entitled to make unilateral decisions based on price considerations or any other grounds—this is the Colgate doctrine. I think it is correct.

In truth, each of the three points I have just mentioned are covered by current law; namely, the unanimous Monsanto decision. There is no need for this legislation that will encourage needless litigation, harm consumers, reduce the opportunities for discounts, jeopardize beneficial business practices, and generally undercut the fairness and equity of American antitrust law. That is what this bill does. This bill does it under the guise of trying to benefit consumers when in fact those of us who really understand these areas understand that consumers are not going to be benefited; they are going to be hurt.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD a letter which is written to the Honorable BROCK ADAMS by a whole number of listed supporters.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MAY 25, 1988.

Hon. BROCK ADAMS,
U.S. Senate, Washington, DC.

DEAR SENATOR ADAMS: We strongly oppose S. 430, the "Retail Competition Enforcement Act of 1987." Several of the companies and trade associations listed below have written to you in the past to let you know of their strong opposition to this legislation. Other companies and associations are now writing for the first time. Opposition to this bill continues to grow, including the American Bar Association's Section on Antitrust Law, the Antitrust Committee of the Bar Association of the City of New York, and leading antitrust scholars. We firmly believe that this is bad legislation.

S. 430 constitutes a major change in our antitrust laws which, in the final analysis, will impair the ability of thousands of manufacturers to be responsive to consumer demands for the best possible quality goods and services at the lowest possible price.

The considerable discussion and debate over S. 430 during the past few months have served to strengthen concerns about the legislation and have confirmed the severe, negative effect S. 430 would have if enacted.

The proponents of S. 430 continue to ignore its negative effects. Contrary to the unsupported assertions made by proponents, S. 430 will essentially overrule—not just clarify—the *Monsanto* decision, will blur both the distinction between unilateral conduct and conspiracy, as well as between price and non-price agreements, and could expand—not simply codify—the *per se* rule against vertical price-fixing.

The recent Supreme Court decision in *Business Electronics Corp. v. Sharp Electronics Corp.*, reiterated that vertical price fixing is *per se* unlawful. In reaching this decision the Court noted that "legitimate and competitively useful conduct" could be frustrated if manufacturers were held liable for price-fixing without proof of an express or implied agreement to set prices.

Monsanto and *Sharp* were well-reasoned decisions that confirmed fundamental legal principles. On the other hand, S. 430 would make radical changes in our antitrust laws, all for the worse.

We, therefore, urge your opposition to S. 430.

Sincerely yours,

Chamber of Commerce of the United States, National Association of Manufacturers, Alabama Business Council, American Apparel Manufacturers Association, American Furniture Manufacturers Association, American Paper Institute, American Textile Manufacturers Institute, Inc., The Beer Institute, Citizens for a Sound Economy, Competitive Enterprise Institute,

The Construction Industry Manufacturers Association, Distilled Spirits Council, Federation of Apparel Manufacturers, Maryland Chamber of Commerce, Mississippi Manufacturers Association, National Automobile Dealers Association, National Beer Wholesalers Association, National Electrical Manufacturers Association, Northern Textile Association, Portable Power Equipment Manufacturers Association,

U.S. Business & Industrial Council, The Wine Institute, A-dec, Inc., ADEMCO, Adolph Coors Company, American Standard, Inc., Andover Togs, Anheuser-Busch Companies, ARCO, Armco Inc., ASARCO, Inc., Blount, Inc., Boise Cascade, BP America, Burlington Inc.,

Caterpillar Inc., Chalk Line, Inc., Chesebrough-Pond's Inc./Lever Brothers Co./Thomas J. Lipton, Inc., Chevron USA, Combustion Engineering, Inc., Compaq Computer Corporation, Corning Glass Works, DOW Chemical Company, Dresser Industries, Inc., Estee Lauder Companies,

FMC Corporation, Ford Motor Company, Fort Howard Corporation, General Dynamics Corporation, Georgia Pacific Corporation, Harris Corporation, Henson-Kickernick, Inc., Hewlett-Packard Company, Hoechst-Celanese, Household International Corporation, Interco Incorporated,

(Londontown/Converse/Florsheim/Broyhill/Ethan Allan/The Lane Company), ITT Corporation, Joseph E. Seagram & Sons, Inc., ICI Americas Inc., Kimberly-Clark Corporation, Kohler Company, Kraft Inc., The Lamson & Sessions Co., Lennox Industries, Inc., Lenox Inc., Lexington Fabrics, Inc., Milliken & Company,

Mobil Corporation, NEC Home Electronics (U.S.A.) Inc., Nike, Inc., Nissan Motor Corporation in U.S.A., North American Philips Corporation, Novell, Inc., Outboard Marine Corporation, Parker, Hannifin Corporation, Peavey Electronics Corporation, Pendleton Woolen Mills, Pepsico, Inc., The Pillsbury Company, Pitney Bowes Inc., PPG Industries, Inc.,

Raytheon Company, Robert Bosch Corporation, Rockwell International Corporation, Rohm & Haas Company, Russell Corporation, Scott Paper Company, Siemens Capital Corporation, Sony Corporation of America, Southwestern Bell, Springs Industries, Inc., Tee Jays Manufacturing,

Textron Inc., Thomson Consumer Electronics, Inc., The Timken Company, Tom's Foods Inc., The Toro Company, Union Camp Corporation, Vanity Fair Mills, Wang Laboratories, Inc., West-Point Pepperell/Cluett, Peabody & Company, Inc., Whirlpool Corporation, Xerox Corporation.

Mr. HATCH. In addition, I ask unanimous consent that a letter written to the Honorable STROM THURMOND dated February 3, 1988, by Daniel Oliver, Chairman of the Federal Trade Commission, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEDERAL TRADE COMMISSION,
Washington, DC, February 3, 1988.

Hon. STROM THURMOND,
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: Thank you for your letter of January 5, 1988, concerning S. 430. We appreciate the opportunity to comment on this proposed legislation, as amended and reported by the Judiciary Committee. On April 23, 1987, I testified before the

Antitrust, Monopolies and Business Rights Subcommittee to express the Federal Trade Commission's opposition to the earlier version of S. 430. Although the amended version is somewhat more limited in scope than the earlier version, a majority of the Commission continue to oppose S. 430, because its enactment is likely to have adverse consequences for competition and consumers.

The antitrust laws have traditionally permitted a seller unilaterally to refuse to deal with distributors that do not comply with the seller's pricing policies. In *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919), the Supreme Court said that a seller acting alone is free to "exercise his own independent discretion as to parties with whom he will deal." Under *Colgate*, sellers have been able to terminate dealers who do not adhere to announced price schedules, so long as there is no agreement to fix resale prices. In *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984), the Supreme Court determined that no such agreement exists, as a matter of law, unless there is evidence that "tends to exclude the possibility" that a seller acted independently.

S. 430 could be applied to overrule—or at least to undermine substantially—the *Colgate* doctrine. Under the proposed legislation, a seller's unilateral decision to terminate dealers who do not adhere to an announced price list nevertheless could be deemed an unlawful conspiracy merely because competing dealers had complained about the terminated dealers. This potential exposure to treble damage liability would make it much more difficult for suppliers to exercise their long-standing right to choose the parties with whom they will deal.

The amended version of S. 430 would make it slightly more difficult to prove a conspiracy than the original bill, because it would predicate a law violation on a finding that communications from complaining dealers were a "major contributing cause" for the dealer termination at issue. The term "major contribution cause" is not defined. However, we understand that the majority report accompanying the bill states that a communication may be deemed a "major contributing cause" even if it was not "the sole, primary, or even at least 50 percent of the cause of the termination or refusal to supply." Consequently, S. 430 apparently would permit juries to find that communications concerning distribution strategy were a "major contributing cause" of a termination, even when the supplier would have undertaken the termination unilaterally. S. 430 fails to recognize that the self-interest of suppliers and dealers may coalesce, so that suppliers act in ways that benefit dealers without any agreement or conscious commitment to a joint course of action. Consequently, suppliers may be at risk of antitrust liability whenever they terminate dealers following the receipt of complaints from other dealers.[1]

The proposed conspiracy standard in S. 430 is thus likely to inhibit the exchange of valuable marketing information between suppliers and distributors. Suppliers may curtail discussions of marketing issues with distributors to forestall the risk of treble damages liability. If valuable marketing information is not provided, suppliers may be unable to formulate and pursue unilateral distribution strategies that benefit consumers.

S. 430 also proposes to codify the existing per se rule of illegality for resale price maintenance. The commission does not believe that codification is desirable. A large and growing body of antitrust and economic scholarship indicates that vertical restraints, including resale price maintenance, often serve procompetitive purposes. For example, manufacturers may impose vertical restraints to facilitate the delivery of presale services to consumers, to deter "free riding," and thereby to preserve dealer incentives to furnish services that consumers value.[2]

The preservation of pre-sale and post-sale services is important to the economy, particularly in the high technology area. Many of the important new products introduced by American manufacturers in recent years are technologically complex and require both pre-sale services and after-the-sale support. During the introductory marketing of these products, when few potential buyers are familiar with them, pre-sale demonstrations by dealers are indispensable to the products' acceptance by consumers. But few dealers would be willing to provide such demonstrations if consumers to whom they demonstrate the product may then buy it from a "free riding" discounter.[3] Restrictions on intra-brand competition therefore may be necessary to bring an innovative new product to the market, even when the producer is not facing competition from comparable products of different brands.

Vertical restraints can also facilitate interbrand competition by preventing free riding on promotional services. Suppliers who need point-of-sale and other marketing efforts by dealers to compete with other suppliers may impose vertical restraints to prevent free riding by dealers who fail to furnish promotional services. Such promotional services may include in-store displays or more intangible services. For example, the types of outlets that carry apparel or cosmetics brands often signal to consumers useful fashion or quality information. Department stores may convey such a message, and thereby provide a service to the manufacturer, simply by carrying a product. In such cases, vertical restraints maintain dealers' incentives to continue providing promotional efforts that foster inter-brand competition.[4]

It is important that the courts have the flexibility to interpret the antitrust laws in light of current economic understanding of the practices involved. A statutory codification of the per se rule for resale price maintenance would deprive the courts of that flexibility.

We urge you to consider the full implications of S. 430 for the competitive process. Enactment of this legislation is likely to stifle procompetitive conduct and to harm not only American manufacturers, but also the very consumers the bill purports to protect.

By direction of the Commission,[5]

DANIEL OLIVER,
Chairman.

Mr. HATCH. Mr. President, I yield the floor.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER (Mr. SIMON). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, when I heard a motion had been made to proceed to the consideration of S. 430, I felt constrained to come to the floor to share with the Senate some information that had come to my attention from constituents in my State of Mississippi about what they considered to be serious deficiencies in this legislation. They expressed to me in their correspondence the fear that this is going to make it more difficult for small businesses, particularly in the high technology area, to compete with foreign firms and others in our U.S. market.

Mr. President, I am not a member of the Judiciary Committee, and I do not pretend to know any more than those who have been speaking, who have been reviewing the hearing record, listening to witnesses testify about this bill, and have a better working knowledge of antitrust law than I do. But from my perspective of trying to keep up to date with the changes in this area of the law, this is a bill that is much more complex than has been suggested by its proponents.

I remember being in law school—and the present occupant of the chair may have a recollection similar to mine—when professors would talk about how, if the court made a decision one way, it would open the floodgates of litigation. We have all heard that phrase. I remember hearing it a great deal when I was in law school. I am told that enactment of this bill will open the

[1] For example, even if a dealer's late payments to a supplier were the supplier's primary reason for terminating the dealer, S. 430 would apparently permit a jury to find the supplier liable, if the dealer's discounting had influenced the decision and the supplier had learned of the discounting from other dealers.

[2] In the absence of such restraints, dealers who do not provide pre-sale services—and hence enjoy lower costs—are able to underprice full service competitors. Consumers may then take advantage of the pre-sale services provided by the higher price dealers but buy the product from the discounting free riders. This effect discourages all dealers from providing the desired services, as the Supreme Court recognized in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 55 (1977).

[3] This is why dealers who provide pre-sale services predictably complain to manufacturers about free riders who do not. Under the proposed legislation, such complaints could give rise to an inference of conspiracy.

[4] Without such restraints, full service merchants will often find it more profitable to discontinue carrying a brand that is also sold by discounters and instead rely more heavily on house brands. The result may be to reduce consumer choice among brands.

[5] Commissioner Bailey does not join in this letter. She submitted her views to the Subcommittee last April, and continues to believe that the Commission should direct some of its law enforcement resources at resale price maintenance. She would point out, however, that whatever the Commission believes the appropriate theory of enforcement should be, it has not opened one single investigation into resale price maintenance in all of fiscal year 1987 and the first third of fiscal 1988.

Commissioner Strenio also does not join in this letter. He recognizes that the Monsanto evidentiary standard for vertical price-fixing conspiracies may be applied in a very severe fashion. *See, e.g., Garment Dist., Inc. v. Belk Stores Services, Inc.*, 799 F.2d (4th Cir. 1986). However, he nonetheless is concerned about statutory language that would create a conspiracy standard without a clear "meeting of the minds" condition. The vague "implied suggestion" language in the revised version of S. 430 is particularly troubling in this regard. Finally, he thinks that altering the statutory language so that the request, demand or threat at least must be the most important contributing cause of the termination or refusal to deal merits consideration.

floodgates of litigation. I am told that the Supreme Court in its decision in the Monsanto case actually settled the law and probably will make further decisions delineating the limits of the case so that manufacturers, distributors, and consumers—all affected in one way or another by that decision—will know what the law is and what the rules are. The law will be settled. On the other hand, if we enact this legislation, which overturns the Monsanto case and purports to establish by law a new evidentiary standard in the vertical price fixing area of antitrust law, it will confuse everyone, including manufacturers, distributors, and consumers, and will promote additional litigation.

The administration of justice does not seek to be disruptive or to be confusing. Therefore, I urge the Senate before we proceed to consider the passage of this legislation, to ask the committee to take another look and to review the complexity of the issues involved so that we will know where we are headed if we enact this bill.

My information is that manufacturers, in particular, suffer a great deal of distress when they contemplate the enactment of this bill.

To summarize what I understand the facts to be, Mr. President, in Monsanto the Supreme Court actually held that to avoid summary judgment in a contract termination suit, a terminated dealer had to prove a desire for conscious price fixing by the manufacturer. This bill would allow such suits to go to the jury and be decided as factual matters by showing simply that a manufacturer received price complaints about a dealer and because of such complaints terminated the dealer.

In describing the reason for the legislation, the committee report from the Judiciary Committee criticizes the Department of Justice and its enforcement policies in this area of antitrust law. But in the report filed by the minority, Senators THURMOND, HATCH, and SIMPSON disagreed with the majority and urged that this Supreme Court decision not be reversed by the Congress in effect because it does not need further clarification.

The judicial process is more appropriate, and they argued for addressing any ambiguities on a case-by-case basis in this complex antitrust area. If we tried to codify an evidentiary rule, it would deprive the courts and enforcement agencies of any flexibility to interpret and apply antitrust law in light of current economics.

Vertical restaints, I am told by these Senators, usually serve pro-competitive purposes such as facilitating services to consumers.

There is another summary of this legislation which was brought to my attention when it became apparent that the legislation might come to the floor. This statement seemed to me to be important for the Senate to consider:

The proposed legislation allows finders of facts, the jury, to infer that a supplier and a buyer who communicate with each other have unlawfully conspired whenever the supplier takes actions in its own interests that also serve the interests of the buyer. Under the proposed legislation suppliers whose business plans call for the termination of dealers who do not adhere to their price list could be deemed conspirators simply because they receive communications concerning dealers who sell at a discount.

That seems to me to be a very dramatic and dangerous change in the law if that is what we are being called upon to do in this legislation.

I am also reading again from another summary of this proposed legislation which says:

Vertical restraints stimulate the introduction of new products by enabling new entrants to recover market development costs and vertical restraints prevent dealers from using services provided by one manufacturer to sell the products of a competing manufacturer.

But I will tell you, Mr. President, what got my attention more than any of these other documents, any of these other summaries or the committee report, were letters that I received from back home from my friends who told me this was dangerous and inappropriate legislation.

I am going to read from a letter I received from one of our small electronics companies in Mississippi. We do not have many big companies in my State. Most of our manufacturing firms are small compared with the larger firms around the country. So we are not talking about big business people. We are not talking about the huge conglomerates, the Fortune 500's. These are family businesses, Mr. President, people who have started a business, have watched it grow, and have developed dealerships.

This first letter is from an electronics company. I want to tell you what it says.

. . . we have attempted to insure the satisfaction of our customers through selecting particular dealers and training those dealers both here in our Mississippi facilities and also through the use of two full-time factory "clinicians" that travel throughout the United States training the dealers and dealer personnel how to sell, service and install our equipment. Customer satisfaction must continue to be the "prime directive" of our company . . . If we are to survive!

If the Wall Street Journal article is an apt "description" of the above referenced measure (S.430), then I am deeply and extremely concerned that Congress in their fervor to stop "price fixing" will shoot the consumer in the foot and probably the "ricochet" will kill off manufacturers like ourselves who are trying to deal through local dealers that service the customer instead of dealing with mail order houses that ship goods to the consumer "in the box" with no instructions and no backup service whatsoever.

Now I read the concluding paragraph:

Please resist any attempt to pass this crazy legislation loosely billed "Freedom From Vertical Price Fixing Act of 1987" aka S.430 . . . I'm afraid if this passes, this will be one more nail in the coffin of American high tech industry . . . I'm probably more concerned with regard to this issue than any issue I've ever written you about previously.

Please consider the implications of destroying our dealer network that we've worked nearly a quarter of a century to put together . . . .

That gets your attention. The Senate ought to pay attention to letters like that from small electronics firms around the country. That is what they think of this bill. It is a turkey. And we ought not to take it up until we get some more information about the practical consequences of it.

Here is another letter from a small company in another town in my State, Mr. President. It simply says:

This bill will surely reduce convenient and reliable service for almost all consumer products. Customers who walk out of a store with a new product in a box and have it not work when it is unpacked, with no local service available, we think, are treated unfairly.

This bill is simply anti-small business.

One of them enclosed a copy of an editorial; I think it is from the Wall Street Journal. I want to read the first paragraph, if I may, with the permission of the Senate, into the RECORD.

The editorial begins:

Say you want to buy a sophisticated stereo system for Christmas. You have a choice. You can go to a full-service stereo store, where a "sound technician" will answer all your questions, arrange for free delivery and provide full service on repairs. Or you can visit "Discount City," where there are harried salespeople and minimal servicing, but prices are one-third less. Where you shop depends on what you value more—service or price. A bill introduced by Senator Howard Metzenbaum would narrow a consumer's opportunity to make such choices. It would penalize the store providing the expensive services by making a manufacturer who tries to pull his products out of Discount City liable to a treble-damages antitrust suit.

The article continues:

While some consumers might instinctively support Mr. Metzenbaum's effort, it's unlikely that reality would match the theory. Some manufacturers, for instance, would avoid dealing at all with discounters, rather than risk a treble-damages antitrust lawsuit. In any event, no such law exists now, and the consumer market is flush with both kinds of retailers and a large universe of manufacturers designing products for all tastes. Bear in mind also that the Metzenbaum bill comes from one of Congress's leading protectionists; the anti-import trade bill is the one thing that could hurt the people the senator is trying to protect.

Mr. President, I ask unanimous consent that the entire article from which

I just read be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DISCOUNTING THE MARKET

Say you want to buy a sophisticated stereo system for Christmas. You have a choice. You can go to a full-service stereo store, where a "sound technician" will answer all your questions, arrange for free delivery and provide full service on repairs. Or you can visit "Discount City," where there are harried salespeople and minimal servicing, but prices are one-third less. Where you shop depends on what you value more—service or price. A bill introduced by Senator Howard Metzenbaum would narrow a consumer's opportunity to make such choices. It would penalize the store providing the expensive services by making a manufacturer who tries to pull his products out of Discount City liable to a treble-damages antitrust suit.

The legislation is designed to curb a practice called resale-price maintenance, in which a manufacturer sets a minimum retail price below which its products should not be sold. A typical dispute involves two retailers that carry a manufacturer's product. One begins to sell at a deep discount. The non-discounter suffers a drop in sales and asks the manufactuer to stop supplies to the discounter. Under the bill, the fact that a manufacturer cut off shipments to a discounter would be sufficient evidence to warrant a jury trial on charges that antitrust laws against price fixing have been violated. A Senate floor vote on the Metzenbaum bill is expected soon; similar legislation already has passed the House.

Under current case law manufacturers have been able to withdraw products from discounters, the purpose of which usually is to encourage dealer services and a more sophisticated sales effort. In effect, the Metzenbaum legislation would overturn a 1984 Supreme Court decision, *Monsanto Co. v. Spray-Rite Service Corp.*, which ruled that an antitrust plaintiff must produce evidence that there was a price-fixing agreement between the manufacturer and one or more dealers. Senator Metzenbaum believes that *any* practice that limits discounting should be illegal and that this bill will force lower prices.

Discounters usually lose their contracts because consumers have complained to manufacturers of shoddy service and hostile return policies or because other stores complain that the discounter is "free-riding" on their service (typically, the consumer elicits lengthy product information from a store that provides it, then leaves to buy the product at the no-frills discounter).

While some consumers might instinctively support Mr. Metzenbaum's effort, it's unlikely that reality would match the theory. Some manufacturers, for instance, would avoid dealing at all with discounters, rather than risk a treble-damages antitrust lawsuit. In any event, no such law exists now, and the consumer market is flush with both kinds of retailers and a large universe of manufacturers designing products for all tastes. Bear in mind also that the Metzenbaum bill comes from one of Congress's leading protectionists; the anti-import trade bill is the one thing that could hurt the people the senator is trying to protect.

A mini-revolution has taken place in the past decade as the Supreme Court has recognized that many anti-trust laws harm rather than help consumers. By removing the important distinction made in the Monsanto case between price fixing and legitimate price setting, the Metzenbaum bill ultimately would deliver consumers less choice than they have now.

Mr. COCHRAN. Mr. President, there are two more letters I am going to read brief excerpts from. Then I intend to yield the floor. But I think they sum up what other letters I have received from small companies in my State are saying about this legislation. Here is one from a firm in my State in Tupelo, MS.

We beleive this bill represents a very serious threat to the right of a manufacturer, acting independently, to deal, or refuse to deal, with whomever it chooses. Its great danger lies in the fact that it would permit concerted action to be inferred on the basis of complaints alone and thereby expose a manufacturer to treble damage liability.

The bill is aimed at changing the decisions of the United States Supreme Court which have dealth with the subject, and we strongly oppose enactment of the same.

We respectfully request your opposition to this ill-advised measure.

Another small company in Olive Branch, MS wrote:

In our experience, it is a commercial fact of life that competing distributors are prone to complain to manufacturers about each others' activities. For example, a distributor may blame its poor sales performance upon what it perceives to be unfairly low prices offered by a competing distributor . . . Manufacturers have no practical means to prevent distributors from lodging complaints of this type . . . We firmly believe that the Supreme Court drew the line correctly with respect to this issue in the *Monsanto* decision . . . We urge you to vote against this bill.

Mr. President, with information from all around the country available to the committee, I urge that we refrain from proceeding now to consider this bill. Let the committee take another look. Let us evaluate the practical consequences of the adoption of this legislation. In short, let us look before we leap into this new area of legislation, where we have never ventured before, with such careless abandon.

I yield the floor.

Mr. BOND. Mr. President, I join my colleague the distinguished senior Senator from South Carolina and my good friend the Senator from Mississippi in opposing the motion to proceed to the consideration of S. 430, the Retail Competition Enforcement Act.

I believe this bill would cause a great deal of problems for businesses of all sizes, because it would result in an unnecessary increase—one might even say an explosion—in litigation. What is more important, it likely would result in increased costs to consumers, because when businesses are forced to bear additional expenses, the most likely and logical place for them to recover those expenses is from their customers.

The bill has been branded as a pro-consumer bill by its supporters, and it is said that this measure is necessary to protect our right to shop at discount stores. But I believe the distinguished Senator from South Carolina has already pointed out that not only do we have a large number of very good discount stores available all across the country, but also, their numbers are increasing and their sales are increasing.

What this bill does is to change, to overturn, a decision of the U.S. Supreme Court in the 1984 Monsanto case. In Monsanto, the Court set forth the standard regarding evidence which must be presented by a plaintiff in a resale price maintenance suit in order to overcome a defendant's motion for summary judgment. The result of that decision is that a plaintiff must show evidence of some price-fixing agreement in order to avoid a summary judgment. If this bill were to be enacted, defendants would effectively be stripped of their ability to move for summary judgment. The result would be much longer and much more expensive lawsuits and higher prices that would have to be passed on to consumers.

Mr. President, the existing standard which was set forth in the Monsanto case makes sense. That standard is that a plaintiff must show some evidence of an actual agreement between a manufacturer and a rival dealer as opposed to merely action taken in conjunction with a complaint. If we were to enact this bill, we would be forcing businesses to shy away from taking action against dealers who are not meeting their commitments—not paying their bills or not providing service, for example—because of the fear of a suit under a section of the Sherman Antitrust Act, which could result in treble damages and significant legal fees.

Mr. President, I hope that my colleagues will join me in voting against the motion to proceed to this piece of legislation. It would be a grave mistake to enact this bill. Frankly, with all the important measures facing us, I do not believe that it is in the Senate's interest to invest a large amount of time in debating it. If we are forced to consider the bill, I will have significant additional comments to share with my colleagues regarding my reasons for opposing this bill. At this time, however, I just note my opposition and urge my colleagues to oppose the bill.

Mr. BYRD. Mr. President, may I make a unanimous-consent request? I am authorized to proceed to make this request.

Mr. President, I ask unanimous consent that the vote occur on the motion to proceed at 5:15 p.m. today.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. METZENBAUM. Mr. President, I have heard some interesting arguments this afternoon, some arguments about the choices between getting service or getting a discount, some arguments that we should not proceed to take up this bill.

Come on, now—do you not believe that people in Missouri, in Utah, in South Carolina should have the right to go to a discount store and buy what they can buy at a lower price? What is so sacred about the manufacturers' right to set the price and a discounter cannot lower the price? The American consumer has some rights, and those are the rights we are talking about in this bill.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. METZENBAUM. I will just be a moment.

What is so terrible about giving a purchaser—an individual who wants to go out and buy a VCR or clothes, a refrigerator, or whatever—the right to buy it at a discount?

I hear people standing on the floor saying that we should not even proceed to this bill because it is going to take away the rights of the individual. The rights of the individual are protected by this legislation.

Let us go to the legislation. Let us debate it. Let us vote it up or down. Let us see whether or not the Senate is prepared to stand next to the House, with the consumers of this country, or whether we are going to stand with the retailers who do not want to discount prices and the manufacturers who prohibit their storekeepers from selling at a discount price. It is an elementary proposition. This is not a complicated bill; it is a simple bill.

This bill does not make litigation. It eliminates litigation. This bill provides the consumer with the right to buy at a discount. If you do not want them to do that, if you think a manufacturer should be able to set a price and not allow a discount, vote against it. But please understand what you are doing. You are voting in an inflationary manner.

If you believe the higher prices are good for this country, vote against S. 430, my bill—my bill with 29 other cosponsors. If you think it is good to have higher prices in this country, then vote against it. Do not let the bill come to the floor. Filibuster.

All the organizations supporting this bill, which are indicated on the chart at the rear of the Chamber, are right. There is merit to it. They are concerned about consumers. On the chart with the colors, the red figures indicate the discounted prices as compared to the higher prices fixed by the manufacturer.

I believe we ought to move forward with this legislation. I am prepared to vote. The question before the body is whether or not we ought to proceed to take up this legislation. I believe we should. I hope that we will not find ourselves engaged in a lengthy debate as to whether we ought to proceed to the legislation.

Regular order.

The PRESIDING OFFICER. Does the Senator from South Carolina desire the floor?

Mr. THURMOND. Mr. President, the American Bar Association, section of antitrust, considered this matter. The report is as follows:

AMERICAN BAR ASSOCIATION SECTION OF ANTITRUST LAW

REPORT TO THE ABA HOUSE OF DELEGATES OPPOSING S. 430, THE RETAIL COMPETITION ENFORCEMENT ACT, AND H.R. 585, OR SIMILAR LEGISLATION

RECOMMENDATION

Be It Resolved, that the American Bar Association opposes S. 430, the Retail Competition Enforcement Act, and H.R. 585, or similar legislation, that would make evidence of a customer's termination by a manufacturer in response to a competing customer's price complaint sufficient in and of itself to raise an inference of a vertical price-fixing conspiracy.

[REPORT]

I. INTRODUCTION

This report presents the views of the American Bar Association Section of Antitrust Law concerning two nearly identical bills, S. 430 and H.R. 585. The proposed legislation would amend the Sherman Act by establishing evidentiary standards applicable in civil cases involving resale price maintenance conspiracy claims. Specifically, under both bills the termination of a customer[1] in response to a competing customer's price complaints would be sufficient in and of itself to raise an inference of a vertical price-fixing conspiracy. This legislation would have the effect of overturning the Supreme Court's decision in *Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S. 752 (1984), which held that such evidence is not sufficient to establish a Sherman Act conspiracy.

Mr. President, this is the report of the American Bar Association I am giving here. I have some other comments subsequently.

II. RECOMMENDATION

The Section of Antitrust Law recommends that the American Bar Association oppose enactment of the proposed amendments to the Sherman Act embodies in S. 430 and H.R. 585. The Section believes that the evidentiary standard established by the Supreme Court in *Monsanto* is fully consistent with long-standing Sherman Act law, and is sound as a matter of antitrust procedure and policy. The legislation would create an unsound evidentiary presumption which would allow an antitrust conspiracy to be inferred from ambiguous evidence. In addition, the proposed legislation would harm consumers by chilling legitimate cooperation between manufacturers and their individual customers and by discouraging manufacturers from pursuing improvements in their marketing strategies.

Mr. President, that is the report of one section of antitrust law of the American Bar Association. That is all of the lawyers in the United States who belong to that section of the American Bar. It is their position that the legislation would create an unsound evidentiary presumption which would allow an antitrust conspiracy to be inferred from ambiguous evidence. In addition, the proposed legislation would harm consumers—this is the American Bar Association speaking—by chilling legitimate cooperation between manufacturers and the individual customers and by discouraging manufacturers from pursuing improvements in their marketing strategies.

Voting against this bill does not mean a vote for price-fixing at all. The bill addresses the kind of evidence necessary to prove a vertical price-fixing agreement.

I am not in favor of price-fixing. It should be prosecuted.

I want to say that a few years ago—I believe it was in the 1970's—there were fair trade laws. Under these laws, consumers pick more for household products in Virginia than they did in the District of Columbia.

I am glad we do not have price fixing. I am glad we do not have fair trade laws. They are called fair trade laws. It really is simply a matter of making people pay more. I am not in favor of that. But opposition to this bill does not mean higher prices.

III. S. 430 AND H.R. 585

The Senate and House bills are virtually identical. Each bill has two operative provisions. The first provision establishes an evidentiary standard applicable to resale price maintenance claims, while the second confirms that vertical price-fixing agreements remain per se illegal.

S. 430 provides that "[i]n any civil action based on section 1 or 3 of [the Sherman Act], including an action brought under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain a price level, evidence that a person who sells a good or service to the claimant for resale—

"(1) received from a competitor of the claimant, a communication regarding price competition by the claimant in the resale of such good or service, and

"(2) in response to such communication terminated the claimant as a buyer of such good or service for resale, or refused to supply to the claimant some or all of such goods or services requested by the claimant,

"shall be sufficient to raise the inference that such person and such competitor engaged in concerted action to set, change, or maintain a price level, for such good or service in violation of such section.[2]

[1] As used herein, the term "customer" refers to dealers, distributors, and all other buyers for resale.

[2] The House bill differs from the Senate bill only in its inclusion, after each reference to "price

Both bills further provided that in any civil action brought under Section 1 of Section 3 of the Sherman Act alleging an agreement to fix prices, the fact that a seller and a purchaser entered into an agreement as to the resale price of a good or service "shall be sufficient to establish" a violation of that section.[3]

IV. MONSANTO CO. V. SPRAY-RITE SERVICE CORP.

In *Monsanto* the issue addressed by the Court was the quantum of evidence required to raise a jury issue when a customer alleges that it was terminated by a manufacturer pursuant to a vertical agreement to maintain resale prices. The Court held that a jury should not be permitted to infer an agreement merely from the existence of complaints by competing customers about the plaintiff's price-cutting, or even from the fact that the termination was "in response to" such complaints, because such evidence, without more, does not indicate concerted action. 465 U.S. at 763-64. The Court stated that although evidence of complaints has some probative value, "the burden remains on the antitrust plaintiff to introduce additional evidence sufficient to support a finding of an unlawful contract, combination, or conspiracy." *Id.* at 764 n.8.

According to the Court, in order for an issue for the fact-finder in a customer termination case to be created, "something more than evidence of complaints is needed. There must be evidence that tends to exclude the possibility that the manufacturer and nonterminated distributors were acting independently. . . . [T]he antitrust plaintiff should present direct or circumstantial evidence that the manufacturer and others 'had a conscious commitment to a common scheme designed to achieve an unlawful objective.'"—*Id.* at 764 (quoting *Edward J. Sweeney & Sons, Inc.* v. *Texaco, Inc.*, 637 F.2d 105, 111 (3d Cir. 1980), *cert. denied*, 451 U.S. 911 (1981)).

The Court noted that permitting a finding of concerted action premised solely upon evidence of competitor complaints would seriously undermine the manufacturer's right to establish unilaterally the terms and conditions under which it will sell its merchandise and to terminate those customers who act inconsistently with its marketing goals and strategies. That right has been a basic and virtually unchallenged tenet of vertical restraints law, at least since *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919). Implicit in the *Colgate* doctrine is the recognition that a manufacturer's freedom to decide independently how its products will reach the ultimate consumer is an important element of interbrand competition at the manufacturer level. Although there may be competitive risks when a manufacturer agrees with others about how its products will be distributed, no such risks attend the manufacturer's unilateral distributional choices. Thus, *Colgate* reflects an appropriate reconciliation between manufacturer freedom and the requirements of the Sherman Act.

In *Monsanto*, the Court expressly sought to preserve the *Colgate* doctrine by recognizing that competitor complaints may operate as an important mechanism through which a manufacturer learns of problems in its distribution network. The Court pointed out that "complaints about price cutters 'are natural—and from the manufacturer's perspective, unavoidable—reactions by distributors to the activities of their rivals.' Such complaints, particularly where the manufacturer has imposed a costly set of nonprice restrictions, 'arise in the normal course of business and do not indicate illegal concerted action.' . . . Moreover, distributors are an important source of information for maufacturers. In order to assure an efficient distribution system, manufacturers and distributors constantly must coordinate their activities to assure that their product will reach the consumer persuasively and efficiently. To bar a manufacturer from acting solely because the information upon which it acts originated as a price complaint would create an irrational dislocation in the market."—*Id.* at 763-64 (citations omitted).

V. REASONS WHY THE AMERICAN BAR ASSOCIATION SHOULD OPPOSE THE PROPOSED LEGISLATION

A. The proposed amendments would create a counterfactual evidentiary presumption

The most objectionable feature of the proposed legislation is that it would establish a new conspiracy standard applicable to a small subset of antitrust cases. In his statement introducing S. 430, Senator Metzenbaum stated that there has been "considerable confusion" with respect to the evidentiary standard to be applied in customer termination cases since *Monsanto* and that "[s]ome lower courts' interpretations of what evidence a plaintiff must present under *Monsanto* run counter to traditional conspiracy law and result in the dismissal of cases that should be presented to a jury." To the extent that these statements purport to reflect the true purposes of the proposed legislation, these bills rest on two erroneous premises.

First, there has been no widespread confusion since *Monsanto*. The case stands for the simple proposition that competitor complaints, without more, do not provide a sufficient basis for inferring unlawful concerted activity. The proposed legislation does not attack lower courts' interpretations of *Monsanto*; it attacks the fundamental holding of the *Monsanto* decision itself. Second, *Monsanto* did not alter the law of conspiracy as it relates to resale price maintenance cases. The Court merely applied the traditional principle of conspiracy law that, because the termination of a customer after receiving price complaints is as consistent with permissible independent action as with an illegal conspiracy, a conspiracy should not be inferred from competitor complaint evidence standing alone. Thus, it is the proposed legislation, and not the *Monsanto* decision, that creates a special conspiracy standard applicable to customer termination cases.

The term conspiracy has been traditionally understood to mean "a unity of purpose of a common design and understanding, or a meeting of the minds in an unlawful arrangement." *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946). The courts have recognized that trade conspiracies seldom can be proven with direct evidence, and they have permitted antitrust plaintiffs broad latitude to establish concerted action through circumstantial evidence. Where a conspiracy is to be inferred from circumstantial evidence, however, the courts have required plaintiffs to come forward with evidence sufficient to establish that the alleged conspirators have not acted independently.

Thus, in *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 106 S. Ct. 1348 (1986), the Supreme Court declined to find a conspiracy where defendants had no rational economic motive to conspire, and their conduct was consistent with equally plausible, non-conspiratorial explanations. *See also Transource International, Inc. v. Trinity Industries, Inc.*, 725 F.2d 274 (5th Cir. 1984); *Reborn Enterprises, Inc. v. Fine Child, Inc.*, 590 F. Supp. (S.D.N.Y. 1984), *aff'd per curiam*, 754 F.2d 1072 (2d Cir. 1985). Similarly, in *Tose v. First Penn. Bank*, 648 F.2d 879 (3d Cir.), *cert. denied*, 454 U.S. 893 (1981), a boycott case, the court found no conspiracy because, although the defendant had an interest in preventing plaintiff from obtaining refinancing, the alleged co-conspirators had independent reasons for denying plaintiff a loan. Where plaintiffs have attempted to establish the existence of a conspiracy by proof of parallel conduct, the courts have uniformly held that such evidence, standing alone, is insufficient. *Fine v. Barry Enright Productions*, 731 F.2d 1394 (9th Cir.), *cert. denied*, 105 S. Ct. 248 (1984). The courts have also rejected the view that a conspiracy can be inferred from the existence of competitor meetings, *Hanson v. Shell Oil Co.*, 541 F.2d 1352 (9th Cir. 1976), *cert. denied*, 429 U.S. 1974 (1977), or from the fact that competitors have shared certain information, *United States v. Citizens & Southern National Bank*, 422 U.S. 86 (1975).

The Supreme Court's decision in *Monsanto* merely placed these well-established rules concerning Sherman Act conspiracies into a resale price maintenance context, where competitor complaints are an ordinary and necessary element of the manufacturer/customer relationship. A manufacturer, for example, may have a strong interest in ensuring that dealers provide expensive pre-sale and post-sale services. Dealers who provide these services may be unwilling to continue providing them if a discount operator is "free-riding" on the efforts. The mere fact that the manufacturer's interests coincide with the interest of the full service dealer in this situation does not mean that the manufacturer has conspired with the full service dealer in terminating the discounter. The termination, although undertaken following complaints from the full service dealer, would be fully consistent with the manufacturer's individual interest in ensuring that the appropriate level of service is being provided. By permitting an inference of concerted action from ambiguous evidence equally consistent with lawful conduct, the proposed legislation would take resale price maintenance claims outside of mainstream conspiracy law and place them alone in a special category.

There is also a risk that this legislation will not be confined to resale price maintenance. To the extent that these bills purport to "clarify" what constitutes a Sherman Act conspiracy, by permitting an inference of concerted behavior from mere contacts between alleged co-conspirators without proof of a meeting of the minds, there is a danger that the conspiracy requirement in all Sherman Act Section 1 cases will be diluted.

B. The Proposed Amendments Would Discourage Procompetitive Behavior

The evidentiary standard established in *Monsanto* forces courts to face squarely the

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level," of the phrase "including a minimum or maximum price."

[3]Since vertical price fixing is currently illegal per se, this portion of the proposed legislation would merely codify existing case law. This Report does not address this portion of the legislation, nor is anything in this Report intended to express any views on this issue. This Report assumes that resale price maintenance is per se illegal and deals only with the evidentiary standards required to establish the existing of a resale price maintenance agreement.

delicate task in customer termination cases of distinguishing between independent and concerted conduct. The Court's holding was based, in part, on its recognition that it is both unfair and a departure from traditional conspiracy law to allow treble damage liability to be based on evidence that is as consistent with permissible conduct as with illegal conspiracy. But the *Monsanto* rule also has a firm antitrust policy basis: the rule acknowleges that contracts between a manufacturer and its customers are usually beneficial and therefore should not be discouraged. Steps taken by a manufacturer to improve the effectiveness and efficiency of its distribution system, such as the establishment of exclusive territories or adoption of a policy of selling only to full service distributors or dealers, often require extensive contacts between the manufacturer and its customers. A manufacturer typically receives a stream of comments, advice, and criticism from its customers about its marketing approach. For example, a manufacturer may learn from its distributors that free-riding problems are discouraging them from providing repair service and marketing support within their local areas of operation. *See Computer Place, Inc. v. Hewlett-Packard Company,* 607 F. Supp. 822, 830 (N.D. Cal. 1984), *aff'd mem.,* 779 F.2d 56 (9th Cir. 1985) (manufacturer stopped selling to plaintiff, a mail-order retailer, after local dealers complained about free-riding by mail-order dealers).

Often the flow of information from a customer to a manufacturer contains comments—and even complaints—about price competition from other customers. There is no justification, however, for assuming that all such exchanges, and any actions taken by a manufacturer in response, stem from a resale price maintenance motive. Judge Posner illustrates the fallacy of that assumption with the following example:

"The violation of a lawful restriction on distribution, such as a reasonable customer allocation agreement, will manifest itself to the dealer who complies with the restriction of price cutting, for it is only by price cutting or some equivalent concession that a new dealer can take away the established dealer's customers. As long as the supplier's motive is not to keep his established dealers' prices up but only to maintain his system of lawful nonprice restrictions, he can terminate noncomplying dealers without fear of antitrust liability even if he learns about the violation from dealers whose principal or perhaps only concern is with protecting their prices."

Morrison v. Murray Biscuit Co., 797 F.2d 1430, 1440 (7th Cir. 1986).

The proposed legislation potentially would harm consumers by deterring manufacturers from investing in marketing strategies that might enhance interbrand competition and increase output. The risk that a comment by a customer, at most ambiguous, could lead to antitrust liability could cause a manufacturer to forgo marketing efforts requiring close support and participation from customers. Moreover, the proposed amendments would artificially support customers who are failing to perform repairs, failing to advertise, failing to maintain adequate display facilities and otherwise hampering effective distribution of products. The receipt of a single, unsolicited complaint about pricing would prevent a manufacturer from acting in its independent self-interest to terminate such customers. Indeed, a single complaint—even if contrived by the dealer—would tend, as a practical matter, to insulate the dealer complained about against termination, whatever policies the dealer adopts in contravention of the manufacturer's stated distributional policies.

The selection of an evidentiary standard for customer termination cases is, thus, more than a procedural matter; the choice has important substantive consequences.

In adopting the evidentiary standard announced in *Monsanto,* the Supreme Court recognized that impermissible manufacturer conduct with respect to resale prices is often difficult to distinguish from legitimate, procompetitive behavior. Citing *Continental T.V., Inc. v. GTE Sylvania Inc.,* 433 U.S. 36 (1977), the Court noted that even restraints that have impact upon resale prices may foster interbrand competition. The *Monsanto* evidentiary standard thus reflects an effort to confine resale price maintenance liability to the situation that poses the greatest risk to consumers: actual agreements between manufacturers or customers to maintain prices at predetermined levels. A rule that would permit liability where the evidence of an agreement is ambiguous would prevent manufacturers from terminating customers even where their intent in doing so is to enhance competition. Given the uncertainty concerning the situations under which resale price maintenance harms competition, it would be unwise to lower the standard of proof in this area, while preserving a higher standard with respect to horizontal price-fixing and boycotts where the anticompetitive nature of the conduct is undisputed.

C. The Proposed Amendments Would Unnecessarily Abrogate The Judge's Function

According to the statements of its sponsor, one purpose of the proposed legislation is to correct a perceived failure to give due weight to customer complaints in the context of motions for summary judgment and directed verdict. There is no indication, however, that the lower courts have, since *Monsanto,* usurped the jury's role. Indeed, in *Monsanto,* itself, the Court found an unlawful agreement based upon customer complaints in combination with other evidence. Rather, courts have examined evidence of customer complaints in the context in which they occurred in order to determine whether the complaints could support an inference of conspiracy. *See, e.g., Business Electronics Corp. v. Sharp Electronics Corp.,* 780 F.2d 1212, 1219 (5th Cir. 1986) (agreement could be inferred from circumstantial evidence, which included vehemence of complaints, manufacturers' efforts to convince plaintiff to adhere to suggested prices, evidence that complaining customer usually followed manufacturer's suggested prices and encouraged plaintiff to do likewise, and evidence that plaintiff was not free-riding); *Marco Holding Co. v. Lear Siegler, Inc.,* 606 F. Supp. 204, 209—10 (N.D. Ill. 1985) (material issue of fact on conspiracy issue raised by complaints about plaintiff's deviation from manufacturer's price schedule, timing of complaints and termination, vehemence of complaints, and competing customers' threats to stop buying from manufacturer).

The proposed amendments are legislative summary judgment rules. This is an unwarranted abrogation of the federal judge's role. In post-*Monsanto* cases, complaints have not been ignored; they have been treated as relevant evidence on the conspiracy issue. A rule that requires a judge automatically to send such evidence to the jury would be an unwise departure from the normal practice whereby the judge considers the evidence as a whole, not in rigid compartments, before determining whether it is sufficient to go to the jury.

D. The Legislation Is Imprecise and Would Spawn Wasteful Litigation

Both bills suffer from ambiguities, resolution of which would waste the resources of litigants and the courts. The new evidentiary standard would apply whenever a complaint has been "received from" a competing customer. To whom must the customer complain in order for the complaint to be deemed "received" by the manufacturer? If a customer makes an unsolicited comment about a competing customer's prices to a local sales representative, or to the employee who drives the delivery truck, is management precluded thereafter from terminating the competitor without risking antitrust liability?

The phrase "communication regarding price competition" is hopelessly vague. It is broad enough to include nearly every business conversation between a manufacturer and its customer. It is natural and unavoidable for customers to discuss their performance with reference to what their competitors are doing. The topic of "price competition" can come up in countless legitimate contexts, but the proposed legislation's elastic phrasing invests all mentions of price competition with conspiratorial significance.

E. Conclusion

For the reasons expressed above, The Section of Antitrust Law recommends that the American Bar Association oppose S. 430 and H.R. 585 or similar legislation.

June 1987.

Respectfully submitted,

MARK CRANE,
Chairman.

Mr. President, these expert antitrust lawyers have studied S. 430 and think it is not best for the public and that it would be a mistake to pass it.

Mr. President, this bill codifies the per se standard for resale price maintenance. I think resale price maintenance should be per se illegal, but I think the court should be free to consider whether there are times when such activity may or may not be anticompetitive. I do not think we should hamstring the courts this way.

In conclusion, the opposition to this bill does not mean a vote in favor of price fixing. That is absolutely untrue. I am amazed the distinguished Senator from Ohio made that statement. It is incorrect. Price fixing is wrong. I am against price fixing. But it should be proven and not assumed that this bill would allow. This bill assumed price fixing. They ought to have to prove price fixing. For these reasons, I say this bill should not pass and I hope that we would not go into it and take the time of the Senate while we have so many other important matters. If we do go into it, it is going to take a lot of time and there are more important matters. The American Bar Association report is sound. It should be followed. The Monsanto decision handed down by the Supreme Court should not be reversed. It is a very sound decision. Mr. President, I believe it is about time for a vote to be held.

The PRESIDING OFFICER (Mr. WIRTH). The time of 5:15 has arrived. Under the previous order, the question now occurs on agreeing to the motion to proceed to S. 430. The yeas and nays have been ordered.

Mr. SIMON. Mr. President, I ask unanimous consent that I may proceed for 3 minutes, notwithstanding the unanimous-consent agreement.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the Senator from Illinois is recognized for 3 minutes.

Mr. SIMON. Mr. President, I join the Senator from Ohio and others in urging our colleagues to pass this legislation. I was just reading a press release from the National Council of Senior Citizens, a statement by their president, Jacob Clayman, who says:

> The opportunity to buy at discount prices, thereby stretching one's income, is especially important to the elderly and disabled who are on fixed incomes.

Mr. President, it is not simply the elderly. It is farmers in Illinois, Nebraska, North Dakota, Iowa, and other States who are facing problems. It is working men and women who want to continue to be able to buy things at the best possible price. That is what this bill is all about. If you are opposed to price fixing, if you want real competition, if you want the free enterprise system to really work, then let it work. Let us have real competition.

If I may use a personal illustration, our family just bought a new washer at our home in southern Illinois. Our small town of Makanda, IL, did not have a place to buy a washer so we had to go about 12 miles away to Carbondale. We could have purchased one, I assume, at a discount store. We often make purchases at such stores. We decided however, to pay a higher price to take advantage of a long-term service agreement available to us elsewhere.

Those are the things that we ought to continue to be able to weigh. This bill will allow consumers to make those choices and it does not for a moment prevent a manufacturer from insisting that a distributor provide service or deal in an ethical way.

The New York Times has an editorial saying, "The Senate Judiciary Committee's bill and a companion that has already passed the House would codify the 1911 precedent and spell out what constitutes evidence of price fixing. It should be easy for manufacturers to live with. Indeed, the puzzle is why the Metzenbaum measure is controversial. If common sense prevails, it will pass."

I ask unanimous consent, Mr. President, that the New York Times editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 6, 1988]

LET THE RETAIL PRICE BE RIGHT

Should a manufacturer have the power to tell retailers what to charge consumers for a product? The Supreme Court's recent ruling on this doesn't plow new ground but warns Congress that a majority of the Court remains uneasy with forbidding manufacturers to fix retail prices.

Quick passage of a bill sponsored by Senator Howard Metzenbaum would clarify these muddy legal waters. It would protect consumers against price-fixing without impairing manufacturers' discretion in enforcing high retailing standards.

According to a 1911 Court ruling, any attempt by a supplier to influence the price charged by a retailer is automatically illegal. In sending the case of a Houston electronics dealer back for retrial last week, the present Court didn't overturn the 77-year-old precedent. But it is clear from Justice Scalia's opinion that the majority believes consumers may sometimes benefit from minimum price agreements between suppliers and retailers.

The Court communicated its ambivalence by ruling that only agreements *explicitly* setting prices were illegal on their face. A subtle hint from a manufacturer to a retailer about the evils of discounting might, however, pass muster.

This pleased conservative "Chicago School" economists. They acknowledge that price maintenance is sometimes used by giant stores to prevent smaller ones from competing with discounts. But they worry more that the law against setting minimum markups can create inefficiencies.

Take the case of the Blue Ribbon Computer Emporium, which devotes hours to explaining PC's to customers and lumps the cost of demonstrations into the retail price. Unless manufacturers enforce minimum markups, conservatives argue, customers will exploit the service at Blue Ribbon but purchase computers from the No-Frill Computer Parlor down the block. In the end, consumers will lose access to information and manufacturers will lose showcases for complicated products.

This "free rider" problem is real, but to combat it by allowing manufacturers to fix prices is overkill. Manufacturers can still set high standards for service and refuse to supply retailers who don't meet them. All the Court has said is that manufacturers must not fix prices in the process.

The Senate Judiciary Committee's bill, and a companion that has already passed the House, would codify the 1911 precedent and spell out what constitutes evidence of price fixing. It should be easy for manufacturers to live with. Indeed, the puzzle is why the Metzenbaum measure is controversial. If common sense prevails, it will pass.

Mr. SIMON. I urge my colleagues to support this legislation.

Mr. THURMOND. Mr. President, I ask unanimous consent for 1 minute.

The PRESIDING OFFICER. Without objection, the Senator from South Carolina is recognized for 1 minute.

Mr. THURMOND. Mr. President, this bill undercuts the antitrust laws. We need to keep these antitrust laws as they are. This bill reverses the Monsanto decision of the Supreme Court of the United States. This bill is not price fixing. The American Bar Association report that I just read condemns this bill. It is against the bill. They say it is not in the public interest. I hope the Senate will not take time to go into this bill with so many other important things to do.

Mr. HELMS. Mr. President, this bill S. 430, addresses a very complex issue of antitrust law. Frankly, I am concerned by the provision of this bill which would significantly change the evidentiary standards required for proving a conspiracy to set resale prices.

I am not a lawyer, but it appears that this bill would allow a manufacturer to be successfully sued for a price fixing conspiracy based solely on a complaint about pricing that he may have received from another retailer.

It is important to keep in mind that we are talking about a lawsuit that will automatically subject the defendant to treble damages.

Mr. President, I've heard strong arguments on both sides of this bill. Some have been quite emotional; some have been heated. North Carolina is very fortunate to have some of the best furniture retail stores in the country. They are known not only for the quality of their products and service, but also for their competitive prices—probably some of the most competitive prices in the country.

It is natural, I'm sure, that some furniture retailers around the country would like to see their North Carolina competitors out of the picture. That is exactly the concern of North Carolina retailers. It is important to them that our antitrust laws are adequate to protect them from those who might conspire to try to put them out of business.

Mr. President, I have met with furniture retailers from North Carolina, and I understand the concerns they have expressed. I intend to review their concerns thoroughly, and no doubt will be meeting with them again.

As I have said, this bill makes a complex change to the evidentiary standards of antitrust law. Even experienced antitrust attorneys disagree sharply on the effect this bill would have on the market. Proponents of S. 430 claim that the bill will benefit consumers. On the other hand, I've seen analyses of the bill which conclude that it would hurt consumers. We are obliged to assess these conflicting opinions carefully.

For example, the antitrust section of the American Bar Association contends that the change proposed in the bill would actually work to the detriment of consumers in the long run. These experts make the point that manufacturers would be discouraged from cooperating with their retailers in legitimate ways, or from pursuing improvements in their marketing strategies.

Mr. President, I'm a strong supporter of free enterprise and open competition. I know the same is true of our distinguished colleagues who have expressed concerns about this bill. As a result, I believe we need more time to study this bill. I hope that the Senate will not take up the bill until we are certain about the effects and impact of this legislation.

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to proceed to S. 430.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Hawaii [Mr. INOUYE], the Senator from Massachusetts [Mr. KERRY], the Senator from Maine [Mr. MITCHELL], the Senator from New York [Mr. MOYNIHAN], the Senator from Georgia [Mr. NUNN], and the Senator from North Carolina [Mr. SANFORD] are absent on official business.

I also announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Oklahoma [Mr. BOREN] are absent because of illness.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 28, as follows:

[Rollcall Vote No. 196 Leg.]

YEAS—62

Adams	Fowler	Pell
Baucus	Glenn	Pressler
Bentsen	Gore	Proxmire
Bingaman	Graham	Pryor
Boschwitz	Grassley	Reid
Breaux	Harkin	Riegle
Bumpers	Hatfield	Rockefeller
Burdick	Hecht	Roth
Byrd	Heinz	Rudman
Chafee	Humphrey	Sarbanes
Chiles	Johnston	Sasser
Cohen	Karnes	Shelby
Conrad	Kennedy	Simon
Cranston	Lautenberg	Specter
Daschle	Leahy	Stafford
DeConcini	Levin	Stennis
Dixon	Lugar	Stevens
Dodd	Matsunaga	Weicker
Domenici	Melcher	Wilson
Exon	Metzenbaum	Wirth
Ford	Mikulski	

NAYS—28

Armstrong	Heflin	Packwood
Bond	Helms	Quayle
Cochran	Hollings	Simpson
D'Amato	Kassebaum	Symms
Danforth	Kasten	Thurmond
Dole	McCain	Trible
Evans	McClure	Wallop
Garn	McConnell	Warner
Gramm	Murkowski	
Hatch	Nickles	

NOT VOTING—10

Biden	Inouye	Nunn
Boren	Kerry	Sanford
Bradley	Mitchell	
Durenberger	Moynihan	

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 2:20 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1901. An act to designate the Federal Building located at 660 Las Vegas Boulevard in Las Vegas, Nevada, as the "Alan Bible Federal Building"; and

S. 1960. An act to designate the Federal Building located at 215 North 17th Street in Omaha, Nebraska, as the "Edward Zorinsky Federal Building".

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. PROXMIRE).

At 4:22 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 2188. An act to amend section 307 of the Federal Employees' Retirement System Act of 1986.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2792. An act to clarify Indian treaties, Executive orders, and Acts of Congress with respect to Indian fishing rights;

H.R. 3431. An act to release a reversionary interest of the United States in a certain parcel of land located in Bay County, Florida;

H.R. 3559. An act to authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes;

H.R. 3592. An act to amend title 39, United States Code, to limit the rate of pay at which the Postal Service may compensate experts and consultants;

H.R. 3811. An act to designate the Federal building located at 50 Spring Street, Southwest, Atlanta, Georgia, as the "Martin Luther King, Jr. Federal Building";

H.R. 3817. An act to designate the Federal building located at 405 South Tucker Boulevard, St. Louis, Missouri, as the "Robert A. Young Federal Building";

H.R. 3880. An act to extend the authorization of the Upper Delaware Citizens Advisory Council for an additional ten years;

H.R. 3960. An act to authorize the establishment of the Charles Pinckney National Historic Site in the State of South Carolina, and for other purposes;

H.R. 4050. An act for the relief of certain persons in Riverside County, California, who purchased land in good faith reliance on an existing private land survey;

H.R. 4143. An act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes;

H.R. 4212. An act to amend the Joint Resolution of April 27, 1962, to permit the Secretary of the Interior to establish the former home of Alexander Hamilton as a national memorial at its present location in New York, New York;

H.R. 4276. An act to designate the United States Post Office building located at 1105 Moss Street in Lafayette, Louisiana, as the "James Domengeaux Post Office Building"; and

H.R. 4517. An act to amend title III of the Outer Continental Shelf Lands Act Amendments of 1978 to provide for indemnification and hold harmless agreements.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 3431. An act to release a reversionary interest of the United States in a certain parcel of land located in Bay County, Florida; to the Committee on Energy and Natural Resources.

H.R. 3559. An act to authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3592. An act to amend title 39, United States Code, to limit the rate of pay at which the Postal Service may compensate experts and consultants; to the Committee on Governmental Affairs.

H.R. 3811. An act to designate the Federal building located at 50 Spring Street, Southwest, Atlanta, Georgia, as the "Martin Luther King, Jr. Federal Building"; to the Committee on Environment and Public Works.

H.R. 3817. An act to designate the Federal building located at 405 South Tucker Boulevard, St. Louis, Missouri, as the "Robert A. Young Federal Building"; to the Committee on Environment and Public Works.

H.R. 3880. An act to extend the authorization of the Upper Delaware Citizens Advisory Council for an additional ten years; to the Committee on Energy and Natural Resources.

H.R. 3960. An act to authorize the establishment of the Charles Pinckney National Historic Site in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4050. An act for the relief of certain persons in Riverside County, California, who purchased land in good faith reliance on an existing private land survey; to the Committee on Energy and Natural Resources.

H.R. 4143. An act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes; to the Select Committee on Indian Affairs.

H.R. 4212. An act to amend the Joint Resolution of April 27, 1962, to permit the Secretary of the Interior to establish the former home of Alexander Hamilton as a national memorial at its present location in New York, New York; to the Committee on Energy and Natural Resources.

H.R. 4276. An act to designate the United States Post Office Building located at 1105 Moss Street in Lafayette, Louisiana, as the "James Domengeaux Post Office Building"; to the Committee on Governmental Affairs.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, June 21, 1988, he had presented to the President of the United States the following enrolled bills:

S. 1901. An act to designate the Federal Building located at 660 Las Vegas Boulevard in Las Vegas, Nevada, as the "Alan Bible Federal Building"; and

S. 1960. An act to designate the Federal Building located at 215 North 17th Street in Omaha, Nebraska, as the "Edward Zorinsky Federal Building".

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-536. A joint resolution adopted by the legislature of the State of Virginia; to the Committee on Appropriations.

"HOUSE JOINT RESOLUTON NO. 183

"Whereas, the shellfish industry exerts a substantial economic impact on the economy of Virginia; and

"Whereas, approximately 90,500 acres of shellfish harvest areas in Virginia are closed to the direct marketing of shellfish; and

"Whereas, a substantial proportion of these closings are necessary because the water quality in the harvest areas does not meet bacteriological standards established by the National Shellfish Sanitation Program, which utilizes coliform and fecal coliform microorganisms as an indicator of sanitary water quality; and

"Whereas, the coliform or fecal coliform standard may be overly conservative and in recent years a question has been raised as to the suitability of the use of coliform or fecal coliforms as a valid indicator of health risk of shellfish harvest areas, especially in those areas where sources of fecal pollution can not be identified; now therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That the General Assembly of Virginia, by this resolution, memorializes the Congress of the United States to appropriate funds to support a cooperative national research proposal to evaluate the use of coliforms and fecal coliforms and other microorganisms as indicators of health risk associated with the consumption of shellfish; and, be it

"Resolved further, That the appropriate state agencies, such as the Department of Health, the Marine Resources Commission and the Virginia Institute of Marine Science, are requested to assist the U.S. Food and Drug Administration, the Environmental Protection Agency, the National Marine Fisheries Services, the Gulf and South Atlantic Fisheries Development Foundation and the Interstate Shellfish Sanitation Conference in this effort; and, be it

"Resolved finally, That the Clerk of the House of Delegates transmit copies of this resolution to the members of the Virginia Congressional delegation, the Speaker of the United States House of Representatives and the President of the United States Senate in order that they may be apprised of the sense of the Virginia General Assembly."

POM-537. A joint resolution adopted by the legislature of the Commonwealth of Virginia; to the Committee on Commerce, Science, and Transportation:

"HOUSE JOINT RESOLUTON NO. 115

"Whereas, from 1935 to 1966, the Interstate Commerce Commission regulated both the economic and safety behavior of the interstate trucking industry and exempted drivers and trucks used wholly within defined geographical areas around cities and towns known as commercial zones from compliance with safety regulations; and

"Whereas, in 1966, the Federal Motor Carrier Safety Regulations were transferred to the U.S. Department of Transportation, and, unfortunately, the safety exemption for commercial zone operations was transferred also; and

"Whereas, when federal regulation of trucking was implemented in 1935, the commercial zone exemption had a minimal impact on safety due to the local nature of truck operations; the small size of cities, towns, and villages; lower speed limits; and smaller, less complex trucks with lower speed capabilities; and

"Whereas, urban road conditions have changed drastically over the years and now feature high-speed arterial streets, expressways, and highways; and

"Whereas, trucks comprise a high percentage of vehicles using urban arterial streets, highways and expressways and are a high percentage of the vehicles involved in accidents on these roads; and

"Whereas, truck fleets operating under the commercial zone exemption are under no pressure to improve their safety performance and there is no incentive or authority for enforcement of higher overall standards for safe operation of these vehicles and drivers; and

"Whereas, there is no safety justification for continuing to sanction the virtually uncontrolled operation of these vehicles and drivers because they are kept within the limited confines of a commercial zone and it is unacceptable to allow substandard drivers and/or vehicles to share streets and highways with the public; and

'Whereas, continuation of this exemption results in the nation's as well as Virginia's towns and cities serving as a potential dumping ground for unqualified and unfit truck drivers and unsafe trucks; now, therefore, be it

"Resolved, by the House of Delegates, the Senate concurring, That the Congress of the United States is hereby memorialized and the Department of State Police is requested to exercise their respective authorities to eliminate the exemption of commercial zone motor carrier operations from the applicability of the Federal Motor Carrier Safety Regulations and from enforcement activity designed to assure compliance with the regulations; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the Senate of the United States, and the members of the Virginia delegation to the United States Congress that they may be apprised of the sense of the General Assembly of Virginia in this manner."

POM-538. A concurrent resolution adopted by the legislature of the State of Hawaii; to the Committee on Commerce, Science, and Transportation:

"HOUSE CONCURRENT RESOLUTION 61

"Whereas, Hawaii is world renowned for its residential areas of solitude and serenity which contribute to the State's desirability as a place to live; and

"Whereas, a relatively new industry that has experienced rapid growth in the State of Hawaii and elsewhere is sightseeing by helicopter; and

"Whereas, the noise generated by these sightseeing flights destroys opportunities for solitude and serenity in residential areas; and

"Whereas, numerous and longstanding complaints testify to the invasion of privacy due to high noise levels; and

"Whereas, these low altitude flights also pose a risk to the safety of both sightseers and persons on the ground as evidenced by ten crashes and two deaths reported in 1985; and

"Whereas, helicopters are exempt from the requirements of the Federal Aviation Act of 1958 which requires fixed-wing aircraft to maintain certain minimum altitudes; and

"Whereas, the Noise Control Act of 1972 gives primary responsibility for control of aircraft noise to the Federal Aviation Administration; and

"Whereas, the Federal Aviation Administration does not have any specific regulations for helicopter operations, with the exception of rules and regulations governing approach and landing at major air facilities; and

"Whereas, the Federal Aviation Administration's "Fly Neighborly" program, implemented by the Helicopter Association International in 1981, has proven ineffective in dealing with the aforementioned problems and required an inordinate amount of citizen policing; and

"Whereas, the Federal Aviation Administration has shown continued reluctance to set up and enforce rules and regulations concerning minimum altitudes, flight paths, and time schedules, for helicopter use; now, therefore

"Be it resolved by the House of Representatives of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1988, the Senate concurring, That the U.S. Congress is requested to enact Federal Legislation that will require the FAA to:

"(a) Develop specific noise and safety related flight regulations for helicopters over residential areas; and

"(b) Develop a land use compatible altitude and flight path system for helicopter operations which specifically recognizes the rights of citizens to enjoy privacy both in the home and in wilderness areas without undue intrusion from the air; and

"Be it further resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States of America, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, the Chairman of the U.S. House of Representatives Subcommittee on Aviation, the Chairman of the U.S. Senate Subcommittee on Aviation, Hawaii's U.S. Congressional Delegation, the United States Department of Transportation, the Federal Aviation Administration, the Director of the State Department of Transportation, the Chairman of the State Board of Land and Natural Resources, and Janice Lipsen, the Hawaii State Lobbyist in Washington, D.C."

POM-539. A joint resolution adopted by the legislature of the State of Alaska; to the Committee on Commerce, Science, and Transportation.

"LEGISLATIVE RESOLVE NO. 80

"Be it resolved by the legislature of the State of Alaska:

"Whereas the state and its citizens depend on the fish, marine mammals, and other living resources of the ocean for their economy and welfare; and

"Whereas the dumping of garbage in the ocean, even beyond state territorial waters, affects the condition of the ocean's living resources and, it in turn, affects the economy, health, and welfare of the state; and

"Whereas garbage has been found in fishing nets, which results in a loss to fishermen, and garbage has been responsible for the death of a significant number of important fisheries species, sea birds, marine mammals, and other marine life; and

"Whereas the United States is a party to the MARPOL convention, which is an international agreement to prevent the pollution of the ocean by the dumping of garbage from ships; and

"Whereas the United States Congress has recently enacted legislation to amend the Act to Prevent Pollution from Ships (33 U.S.C. 1901-1911) to combat garbage pollution of the ocean, including the growing problem of the disposal of plastics in the ocean, and this legislation implements certain provisions of the MARPOL convention; and

"Whereas the MARPOL convention requires the United States to insure that its ports and terminals provide facilities for the reception of garbage from ships and other vessels; and

"Whereas 33 U.S.C. 1901-1911, as amended, requires that ports and terminals in the United States provide reception facilities for certain pollutants and garbage from ships; and

"Whereas every year there is a large influx of ships to the coast of Alaska to participate in the fisheries within state water and within the 200-mile exclusive economic zone; and

"Whereas many of the ports required by federal law to accept garbage and pollutants are run by small communities that are already experiencing difficulties in disposing of their own wastes; and

"Whereas many coastal communities in Alaska are economically distressed, unusually small, and remote, and have few resources to deal with problems of wastes collection and disposal; and

"Whereas although the prevention of garbage dumping in the ocean is vitally important to these communities, many of them have no funds to increase their capacity for accepting additional wastes, no authority to pay for these facilities, and no expertise to handle some of these wastes; and

"Whereas the present shortfall in state revenues precludes the state from providing funds to help coastal communities to upgrade their ports to meet the standards established by federal law;

"*Be it resolved*, That the Alaska State Legislature urges the United States Congress and the federal government to help the ports in the coastal communities of the state prevent the pollution of the ocean by providing them with the financial and technical assistance necessary to handle the ship garbage and pollutants reception requirements established by the Congress.

"Copies of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Jim Wright, Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress."

POM-540. A joint resolution adopted by the legislature of the State of Washington; to the Committee on Commerce, Science, and Transportation:

SUBSTITUTE SENATE JOINT MEMORIAL NO. 8027

"To the Honorable Ronald Reagan, President of the United States, and to the United States National Oceanic and Atmospheric Administration, and to the United States Environmental Protection Agency, and to the President of the Senate and the Speaker of the House of Representatives, and to the Senate and House of Representatives of the United States, in Congress assembled:

"We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

"Whereas, Plastic production has risen from six billion pounds annually in 1960 to more than fifty billion pounds per year currently; and

"Whereas, Synthetic rope, plastic strapping bands, lost and discarded fishing nets, plastic bags and other manufactured plastic items, and small plastic beads and particles may last for years or decades in the ocean; and

"Whereas, It is estimated that nine million tons of plastics are dumped at sea each year from vessels; and

"Whereas, Because of the entry of plastics materials going into oceans from rivers, estuaries, and other avenues, there may be as much as ninety million tons of plastics accumulating in the ocean annually; and

"Whereas, It has been documented that plastic is responsible for killing millions of birds, fish, seals, turtles, and sea lions each year through entrapment in discarded plastics and ingestion of plastic material; and

"Whereas, Information shows that synthetic debris is a significant contributing cause to the decline of the northern fur seal population and other marine mammals; and

"Whereas, In the Northwest, more than one thousand dollars per year, per commercial vessel, is spent due to damage caused by plastic and debris problems; and

"Whereas, The movement of eastern Pacific tidal waters is such that it brings debris into Washington's offshore waters, making it the Pacific Ocean area most densely contaminated with plastics, besides the Sea of Japan; and

"Whereas, A recent study concluded that Washington's offshore waters contain the highest density of plastics than anywhere else on the West Coast;

"Now, therefore, Your Memorialists respectfully pray that:

"(1) The United States vigorously pursue implementation of Annex V of the international convention for the prevention of pollution from ships, which is designed to reduce the dumping of garbage from ships as well as ensure adequate garbage reception facilities and ports of call;

"(2) More of the current funds appropriated to the United States Coast Guard be used for implementing the provisions of the international convention for the prevention of pollution from ships, and a comprehensive education program concerning marine debris be provided for ocean-going commerce and fishing vessels;

"(3) The United States take action to ensure that countries that have not yet signed the international convention to prevent pollution from ships do so; and

"(4) The United States formally designate significant areas in United States coastal waters, such as the Gulf of Mexico and the ocean coast of the State of Washington, as off-limits to marine dumping.

"*Be it resolved*, That copies of this Memorial be immediately transmitted to the Honorable Ronald Reagan, President of the United States, the United States National Oceanic and Atmospheric Administration, the United States Environmental Protection Agency, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

POM-541. A resolution adopted by the House of Representatives of the State of Hawaii; to the Committee on Commerce, Science, and Transportation:

"HOUSE RESOLUTION 61

"Whereas, the federal Coastal Zone Management Act (CZMA) of 1972 is regarded as the model legislation which establishes the opportunity for a partnership among federal and state governments; and

"Whereas, since 1977, the United States Department of Commerce, which administers the federal CZMA has approved twenty-nine state coastal management programs under the provisions of the CZMA, including programs administered by all the coastal states and territories represented in the Western Legislative Conference; and

"Whereas, the western states and territories have continued to participate and contribute to national objectives relating to the nation's coastal zones for nearly a decade; and

"Whereas, the federal consistency provisions of the federal CZMA exemplify the potential benefits of a truly cooperative federal and state partnership; and

"Whereas, the Hawaii State House of Representatives is strongly supportive of federal programs which allows states to exercise a leadership role in the management of natural resources; and

"Whereas, under the provisions of the federal CZMA, states with federally approved coastal management programs are empowered to approve or reject Outer Continental Shelf (OCS) oil and gas exploration and development plans; and

"Whereas, under their federally approved state coastal management programs, Alaska, California, Oregon, Washington, and other coastal states properly condition OCS oil and gas exploration and development plans to ensure that the OCS activities do not adversely impact nationally important coastal resources; and

"Whereas, the United States Department of the Interior (DOI) opposes the state efforts which condition OCS exploration and development; and

"Whereas, coastal states which are properly imposing restrictions on OCS oil gas exploration and development plans under their federally-approved state coastal management programs may be subject to having federal approval of their state coastal management programs withdrawn; now, therefore,

"*Be it resolved by the House of Representatives of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1988*, That the Congress of the United States is urged to amend the federal CZMA to further specify the federal consistency provision through the passage of H.R. 1876; and

"*Be it further resolved,* That the United States Secretary of Commerce is urged not to initiate any action against any State for any reason not specifically provided for in the National Coastal Zone Management Act; and

"*Be it further resolved,* That the Congress of the United States is urged to investigate the United States Commerce Department's procedures for evaluating state coastal management programs to ensure that the evaluations are not misused to deprive states of their proper authority under the federal CZMA; and

"*Be if further resolved,* That certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and Hawaii's congressional delegation."

POM-542. A resolution adopted by the House of Representatives of the State of Hawaii; to the Committee on Commerce, Science, and Transportation:

"HOUSE RESOLUTION 78

"Whereas, Hawaii is world renowned for its residential areas of solitude and serenity which contribute to the State's desirability as a place to live; and

"Whereas, a relatively new industry that has experienced rapid growth in the State of Hawaii and elsewhere is sightseeing by helicopter; and

"Whereas, the noise generated by these sightseeing flights destroys opportunities for solitude and serenity in residential areas; and

"Whereas, numerous and longstanding complaints testify to the invasion of privacy due to high noise levels;

"Whereas, these low altitudes flights also pose a risk to the safety of both sightseers and persons on the ground as evidenced by ten crashes and two deaths reported in 1985; and

"Whereas, helicopters are exempt from the requirements of the Federal Aviation Act of 1958 which requires fixed-wing aircraft to maintain certain minimum altitudes; and

"Whereas, the Noise Control Act of 1972 gives primary responsibility for control of aircraft noise to the Federal Aviation Administration; and

"Whereas, the Federal Aviation Administration does not have any specific regulations for helicopter operations, with the exception of rules and regulations governing approach and landing at major air facilities; and

"Whereas, the Federal Aviation Administration's "Fly Neighborly" program, implemented by the Helicopter Association International in 1981, has proven ineffective in dealing with the aforementioned problems and required an inordinate amount of citizen policing; and

"Whereas, the Federal Aviation Administration has shown continued reluctance to set up an enforce rules and regulations concerning minimum altitudes, flight paths, and time schedules for helicopter use; now, therefore

Be it resolved by the House of Representatives of the Fourteenth Legislature of the State of Hawaii, Regular Session of 1988, That the U.S. Congress is requested to enact Federal Legislation that will require the FAA to:

"(a) Develop specific noise and safety related flight regulations for helicopters over residential areas; and

"(b) Develop a land use compatible altitude and flight path system for helicopter operations which specifically recognizes the rights of citizens to enjoy residential and wilderness experience privacy without undue intrusion from the air; and

Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States of America, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, the Chairman of the U.S. House of Representatives Subcommittee on Aviation, the Chairman of the U.S. Senate Subcommittee on Aviation, Hawaii's U.S. Congressional Delegation, the United States Department of Transportation, the Federal Aviation Administration, the Director of the State Department of Transportation, the Chairman of the State Board of Land and Natural Resources, and Janice Lipsen, the Hawaii State Lobbyist in Washington, D.C."

POM-543. A joint resolution adopted by the legislature of the Commonwealth of Virginia; to the Committee on Environment and Public Works:

"Whereas, the Safe Drinking Water Act Amendments of 1986 as passed by the Congress of the United States mandate a significant increase in resource commitments by the owners and operators of public water supply systems and by state regulatory agencies, such as the Virginia Department of Health; and

"Whereas, the effect of these mandates will be most severely felt by the small water system owners and operators and ultimately by their customers as a result of increased rates; and

"Whereas, ninety-five percent of the public water systems in Virginia are small systems which serve less than 3,300 persons; and

"Whereas, the Virginia Department of Health must promulgate regulations at least as stringent as those promulgated by the United States Environmental Protection Agency (EPA) to retain regulatory primacy; and

"Whereas, proposed and final rules already issued by the EPA in compliance with the 1986 Amendments appear to be burdensome and of marginal public health benefit, especially to small water systems; and

"Whereas, a study performed by the Virginia Department of Health, estimates a 200 percent increase in the amount of state resources to fully implement the regulations which will be instituted under these Amendments; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the United States Congress is memorialized to ensure that regulations proposed and promulgated by the EPA be cost effective and necessary for the protection of public health and that due consideration be given to the economic impacts any federal regulations may have on small water systems which make up the majority of the regulated entities nationwide; and be it

Resolved further, That the Clerk of the House transmit copies of this resolution to the members of the Virginia delegation to Congress, to the Speaker of the United States House of Representatives and the President of the United States Senate in order that they may be apprised of the sense of the General Assembly."

POM-544. A joint resolution adopted by the legislature of the Commonwealth of Virginia; to the Committee on Environment and Public Works:

"Whereas, in 1946, the Governor of Virginia conveyed certain submerged lands containing 2,500 acres, more or less, known as Craney Island, lying and being in Hampton Roads, to the United States of America to be used as a disposal site for material dredge from Hampton Roads Harbor; and

"Whereas, the United States Army Corps of Engineers has announced proposals for the expansion of the Craney Island landfill area and continued use thereof beyond the originally projected termination date; and

"Whereas, Craney Island is within the boundaries of the City of Portsmouth and its ultimate development is vital to the economic vitality of the City of Portsmouth and the Commonwealth of Virginia; and

"Whereas, Craney Island represents a site of substantial size which the City of Portsmouth can offer for expansion of its tax base to the relief of its private homeowners and residents; and

"Whereas, in excess of sixty percent of the land of the City of Portsmouth is nontaxable either as real estate or personal property primarily by reason of ownership thereof by federal or state governmental agencies; and

Whereas, the Virginia Port Authority has expressed an interest in acquiring a certain portion of the Craney Island property for port development and expansion; and

Whereas, an assessment of the environmental impact on the seed oyster beds, other shellfish and crabs, which might be affected by alternatives to the Craney Island landfill should be considered prior to any expansion; and

"Whereas, the Council of the City of Portsmouth has steadfastly expressed this intention to assure that Craney Island is developed in a manner which will guarantee maximum benefits for the city and the Commonwealth; and

"Whereas, the Council of the City of Portsmouth is further committed to assure that Craney Island is developed in a manner compatible with the continued residential expansion occurring on the property in close proximity thereto; now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That the United States Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Institute of Marine Science and other appropriate federal and state agencies consider and make recommendations with respect to (i) all alternatives to the expansion of Craney Island landfill for disposal of material dredged from Hampton Roads and (ii) plans which would make Craney Island available for development at the earliest possible date; and, be it

Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker, of the United States House of Representatives, the President of the United States Senate, the United States Army Corps of Engineers, and to all members of the Virginia Delegation to the United States Congress in order that they may be apprised of the sense of the Virginia General Assembly."

POM-545. A resolution adopted by the Ocean County Board of Chosen Freeholders, Ocean County, NJ, requesting effective legislation that would prohibit dumping sludge and contaminants in the Atlantic Ocean; to the Committee on Environment and Public Works.

POM-546. A resolution adopted by the Council of the Country of Hawaii with re-

spect to the nine regional research centers across the nation; to the Committee on Environment and Public Works.

POM-547. A joint resolution adopted by the legislature of the State of Colorado; to the Committee on Environment and Public Works.

"HOUSE JOINT RESOLUTION No. 1022

"Whereas, This year the United States Senate and the House of Representatives will either consider revisions to the Federal "Clean Air Act", or extend the delay in sanctions against states and communities which are unable to comply with deadlines to meet ambient air quality standards; and

"Whereas, Certain provisions under consideration are of vital importance to the effort to reduce air pollution in Colorado and help address our particular air quality problems; and

"Whereas, Amendments to the federal "Clean Air Act" will be considering" (1) Ozone/carbon monoxide attainment; (2) acid rain; (3) mobile sources/fuels/municipal waste controls; (4) national ambient air quality standards; and (5) hazardous air pollutants; now, therefore,

"Be It Resolved by the House of Representatives of the Fifty-sixth General Assembly of the State of Colorado, the Senate concurring herein:

"(1) That the General Assembly is committed to Colorado meeting the air quality standards set by the federal "Clean Air Act" because of the importance of cleaner air for the health of our citizens as well as the future of our economy and that the General Assembly hereby urges the Congress to additionally study revisions to the federal "Clean Air Act" which would consider: (1) All motor vehicle fuels, such as oxygenated fuels, including but not limited to vapor pressure; (2) incentives to remove from the roads and highways the older, high polluting vehicles which contribute disproportionately to air pollution; (3) greater jurisdictional authority to state and local government to regulate controllable features such as daylight saving time; and (4) potential disruption in motor fuel distribution by the mandating of specific fuels; and (5) continued motor vehicle improvements which further reduce carbon monoxide emissions and which are technologically and economically feasible.

"(2) That the General Assembly hereby urges the Congress to adopt revisions to the federal "Clean Air Act" which are necessary to protect the health of the residents of the State of Colorado and the United States population in general and which take into account and which would provide benefits commensurate with the following considerations: (1) Effective control technology; (2) technological feasibility; (3) societal impact, including but not limited to societal cost and cost/benefit ratios; (4) the effect of tighter standards upon motor vehicle product availability and product performance; and (5) the effect upon fuel economy standards and the dependence of the United States on foreign oil sources.

"Be It Further Resolved, That copies of this Resolution be transmitted to: The Speaker of the United States House of Representatives; the President of the United States Senate; the Honorable Robert Byrd, Majority Leader of the United States Senate; the Honorable Robert Dole, Minority Leader of the United States Senate; the Honorable John Dingell, Chairman of the House Committee on Energy and Commerce; the Honorable Norman Lent, Ranking Minority Member of the House Committee on Energy and Commerce; the Honorable Quentin Burdick, Chairman of the Senate Committee on Environment and Public Works; the Honorable Henry Waxman, Chairman of the House Subcommittee on Health and Environment; the Honorable Edward Madigan, Ranking Minority Member, House Subcommittee on Health and Environment; the Honorable George Mitchell, Chairman of the Senate Subcommittee on Environmental Protection; and to each member of Colorado's delegation in the United States Congress."

POM-548. A concurrent resolution adopted by the legislature of the State of Florida; to the Committee on Finance:

"HOUSE CONCURRENT RESOLUTION No. 280

"Whereas, the economic uncertainty of the 1980's has resulted in a loss of American jobs, a strain on the American family and a restructuring of many of America's industrial corporations, and

"Whereas, one of the leading factors in the creation of economic problems in the United States has been the encroachment of foreign goods and products into the American marketplace, coupled with trade barriers abroad which discourage American exports, and

"Whereas, at the present time foreign manufacturers produce 60 percent of the televisions and radios, 45 percent of the bicycles, 26 percent of the steel, 71 percent of the shoes, 48 percent of the microwave ovens, 79 percent of the stuffed toys, 21 percent of the telephone equipment and 44 percent of the luggage sold in the United States, and

"Whereas, each manufactured product sold in the United States and produced abroad contributes both to our trade deficit and to the domestic loss of American jobs, and

"Whereas, the citizens of Florida and of the United States could have a positive effect upon this corrosive problem by refusing the purchase imported products, and

"Whereas, it is fitting and appropriate that the Legislature of the State of Florida support American manufacturers in their efforts to overcome foreign imported products and preserve American jobs; Now, therefore, be it

"Resolved by the House of Representatives of the State of Florida, the Senate Concurring, That the Legislature of the State of Florida hereby declares the week of July 4th, 1988, as "Buy American Week" and urges all citizens of the State of Florida to participate by refraining from purchasing any imported goods during that week and instead urges them to purchase goods manufactured in the United States.

"Be it further resolved, That copies of this resolution be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress."

POM-549. A joint resolution adopted by the legislature of the Senate of Florida; to the Committee on the Judiciary:

"SENATE MEMORIAL No. 302

"Whereas, the people of the State of Florida have adopted, as a provision of their state constitution, the requirement that the state government operate on the basis of a balanced budget, and that requirement has proved of great benefit to the state, and

"Whereas, in 1976, responding to national concern over a public debt which was then in excess of $300 billion and the existence of a $43 billion federal deficit, the Florida Legislature made application to the Congress of the United States to call a constitutional convention to propose an amendment to the Constitution of the United States requiring a balanced federal budget, and

"Whereas, the national debt in 1986 exceeded $1 trillion, and the estimated 1987 deficit is now approximately $173.2 billion, and

"Whereas, what was national concern in 1976 has, in 1988, become a national crisis, and

"Whereas, this condition of our national fiscal policy threatens the security of our nation, and

"Whereas, the threat to the security of our nation has become so imminent that we can no longer afford the time and expense of a constitutional convention to propose and debate a solution to the crisis that is self-evident, and

"Whereas, Article V of the Constitution of the United States provides for the proposal of amendments to the Constitution of the United States by two-thirds concurrence of the members of both Houses of Congress, and

"Whereas, We should each and every one demand of our U.S. Senators and Congressmen that such an amendment be introduced in both houses of the Congress and that the elected Florida delegation lead the fight to bring about the proposal of this critically important constitutional amendment; Now, therefore, be it

"Resolved by the Legislature of the State of Florida, That the Congress of the United States is urged to adopt, without delay, a joint resolution providing for an amendment to the Constitution of the United States that requires the federal budget to be in balance except under specified emergency conditions.

"Be it further resolved, That the Congress of the United States is urged to take appropriate and immediate action to continue to bring the federal budget into balance and to cause the reduction of the outstanding national debt in the foreseeable future.

"Be it further resolved, That this memorial supersedes all previous memorials applying to the Congress of the United States to call a convention to propose an amendment to the Constitution of the United States to require a balanced federal budget, including Senate Memorial No. 234 and House Memorial No. 2801, both passed in 1976, and that such previous memorials are hereby revoked and withdrawn.

"Be it further resolved, That a copy of this memorial be dispatched to the presiding officers of the Senate and the House of Representatives of Congress and the members of the Congressional delegation from the State of Florida."

POM-550. A petition from a citizen of Santa Monica, California favoring the return of the FBI to its domestic intelligence responsibilities; to the Committee on the Judiciary.

POM-551. A concurrent resolution adopted by the legislature of the State of Oklahoma; to the Committee on the Judiciary.

"ENROLLED HOUSE CONCURRENT RESOLUTION No. 1103

"Whereas, the Sixteenth Amendment to the Constitution of the United States, as evidenced by the history of its adoption, was not intended by its framers, proponents, or the ratifying states to permit taxation by

the federal government of interest income on the obligations of the states or their political subdivisions; and

"Whereas, the Congress of the United States has of late enacted and proposed legislation which operates to tax or restrict such obligations and the income thereon and proceeds thereof, has enacted and proposed retroactive tax legislation, and has enacted or proposed legislation which limits the deductibility for federal income tax purposes of taxes paid under state laws and interest on amounts borrowed by financial institutions to purchase or carry such obligations, all to the manifest detriment of the states and their economies; Now, therefore, be it

Resolved by the House of Representatives of the 2d session of the 41st Oklahoma Legislature, the Senate concurring therein:

"SECTION 1.—The Oklahoma Legislature respectfully memorializes the Congress of the United States to propose a Constitutional Amendment to clarify the Sixteenth amendment to the Constitution of the United States, providing that:

"Interest income derived from debt instruments of the several states and their political subdivisions shall not be subject to tax by the United States when issued for water, sewer, electric, streets, highways, public improvements, health care, waste disposal, schools, or other educational purposes, or for such other purposes as the legislatures of a majority of the states may find from time to time to be public purposes.

"SECTION 2.—Copies of this resolution shall be dispatched to the Clerk of the United States House of Representatives and the Secretary of the United States Senate."

POM-552. A joint resolution adopted by the legislature of the Commonwealth of Virginia; to the Committee on Labor and Human Resources:

HOUSE JOINT RESOLUTION NO. 182

"Whereas, the General Assembly of Virginia believes that our youth represent the future of our society, and ensuring that they are reasonably protected from that which is detrimental to their health, welfare and safety reflects the common values, hopes and aspirations inherent in our national heritage; and

"Whereas, increasing numbers of movies, films and videotapes are being produced which depict extreme and graphic acts of violence, torture and death; and

"Whereas, new "horror" films and videotapes, commonly known as "slasher films," depict graphic acts of actual mutilation of the human body for the sole purpose of inciting debased and perverted emotions in the viewer; and

"Whereas, films and videotapes, commonly known as "snuff films," couple various sexual acts with violence and actual murder; and

"Whereas, these "slasher" and "snuff" films are legal and readily available to children of all ages; and

"Whereas, exposure of young, impressionable minds to such depravity breeds a callousness toward acts of violence and insensitivity toward humanity; and

"Whereas, precedent has been established through current federal regulations and case law concerning pornography and child welfare issues which extend special protections to our children; and

"Whereas, the enactment of appropriate laws and regulations or the enforcement of existing laws and regulations will provide further protection to our children from such extreme violence; Now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That the Congress of the United States is hereby memorialized to enact appropriate laws and regulations or to ensure the enforcement of such existing laws and regulations to better protect our youth from films depicting extreme violence; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the Senate of the United States and the members of the Virginia delegation to the United States Congress, that they may be apprised of the sense of the General Assembly of Virginia in this matter."

POM-553. A joint resolution adopted by the legislature of the Commonwealth of Virginia; to the Committee on Labor and Human Resources:

"HOUSE JOINT RESOLUTION NO. 102

"Whereas, an estimated one million teenage girls become pregnant in the United States each year, and in the Commonwealth of Virginia in 1987, nearly 20,000 teenage girls became pregnant; and

"Whereas, the tragic outcomes of teenage pregnancy result in wasted lives, unfulfilled hopes and costly remedial social and public assistance programs, and cost approximately $16.5 billion in 1985 in federal and state funds to support these young, fragile families; and

"Whereas, the Virginia General Assembly studied the problem of teenage pregnancy over the past two years and addressed the myriad of factors associated with the high rate of teenage pregnancy and multiple ways of preventing this problem; and

"Whereas, the U.S. Bureau of the Census has determined that "the average teenager watches nearly thirty hours of televison each week, listens to the radio for over twenty hours each week, and by the time they graduate from high school, teenagers have spent more time watching television than being in school"; and

"Whereas, the Census Bureau has also found that "the media rank either just ahead or just behind peers and parents as the greatest forces influencing the values and behavior of teenagers and television programming is replete with sexual comment, innuendo, and behavior"; and

"Whereas, studies have revealed that (i) during one year of average viewing, Americans are exposed to approximately 9,230 scenes of suggested sexual intercourse, sexual comment or innuendo, (ii) television portrays six times more extramarital sex than sex between spouses, (iii) ninety-four percent of the sexual encounters on soap operas are between people not married to each other, and (iv) on any given day television viewers are exposed to between seventy and ninety commercials which use sex, innuendo and direct suggestion, to sell cars, travel, soft drinks, wine, toothpaste, clothes, etc.; and

"Whereas, the more than twenty hours of listening to the radio are filled to a large degree with sexually explicit lyrics of current pop-chart songs; and

"Whereas, during the course of the study, the General Assembly determined that the constant exposure of youth to sexually explicit and suggestive broadcasting may negatively influence their decisions regarding their sexual conduct; and

"Whereas, there is much that the media can do to change their image and to expose young viewers to the need to be responsible for their sexual conduct, the advantages of abstaining from nonmarital sexual intercourse, and the repercussions of adolescent sexual activity on the individual and on society; and

"Whereas, representatives of the broadcast media have indicated their willingness to cooperate in addressing the problem of teenage pregnancy by responding to community concerns for alternative viewing and for policing the airing of sexually explicit content to youth; and

"Whereas, media representatives have noted that although some affiliates now provide public service announcements concerning AIDS, advertisements for condoms, and air specials on the problems of teenage pregnancy and adolescent parenthood, the media maintain that they are enjoined from controlling the airing of sexually explicit content; and

"Whereas, representatives of the broadcast media have advised the General Assembly that, pursuant to a U.S. Department of Justice ruling, the industry's Code of Conduct violated anti-trust laws, and broadcasters are prohibited from collaboration on matters of concern to them; and

"Whereas, the General Assembly was further advised that this ruling unwittingly provided opportunities for increased sexually explicit and suggestive broadcasting; and

"Whereas, the General Assembly believes that the ability of broadcasters to establish a code of conduct for the broadcasting of sexually explicit and suggestive programs and advertising for the broadcasting of sexually explicit and suggestive programs and advertising would help to diminish the accessibility and negative effects of such broadcasting on youth; Now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That the Congress of the United States is hereby memorialized to allow the broadcast media to establish a code of conduct for sexually explicit content; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the Senate of the United States, and the members of the Virginia delegation to the United States Congress, that they may be apprised of the sense of the General Assembly of Virginia in this matter."

POM-554. A joint resolution adopted by the legislature of the Commonwealth of Virginia; to the Committee on Veterans' Affairs:

"HOUSE JOINT RESOLUTION NO. 173

"Whereas, the Vietnam War was unpopular and controversial and many of those who served were among the very young and poor; and

"Whereas, these individuals frequently feel that they were "raised in the United States, but grew up in Vietnam"; and

"Whereas, the trauma of their experience in Vietnam still elicits emotional responses from most Vietnam veterans; and

"Whereas, between 9 and 17.7 million gallons of herbicide including Agent Orange, Herbicide White and Herbicide Blue were sprayed from airplanes in Vietnam to defoliate the trees and expose the enemy as well as destroy its food crops; and

"Whereas, Agent Orange contains a mixture of two herbicides, one of which contain the dioxin, TCDD; and

"Whereas, TCDD has been called "one of the most toxic man-made compounds known"; and

"Whereas, laboratory experiments have demonstrated a wide variety of reactions to dioxin in different animals and there is no consistency in the results of these studies; however, relatively small doses of dioxin cause death, cancer and birth defects in some species of animals; and

"Whereas, studies of individuals exposed to dioxin in industrial accidents and through environmental contamination do not provide conclusive scientific evidence to substantiate that dioxin creates chronic health problems; and

"Whereas, it must be understood, however, that such longitudinal studies may not be highly accurate because the latency period was not long enough to show chronic health effects and the data was incomplete; and

"Whereas, the federal government has funded approximately eighty completed studies and at this time, approximately seventy studies are still in progress; and

"Whereas, one of the problems encountered by the federal government in these studies is that there is no comprehensive list of those that served because many of the records were stored in Saigon and were destroyed in the precipitous departure; and

"Whereas, several researchers and the National Cancer Institute have reported that exposure to herbicides increases the possibility of contracting a rare form of non-Hodgkin's lymphoma; and

"Whereas, soft tissue sarcoma, porphyria cutanea tarda, digestive disorders and lung cancer have been reported to occur at increased rates among those exposed to herbicides; and

Whereas, common sense would lead to the conclusion that exposure to an extremely toxic substance must have some profound effects on some of the exposed animals and humans; and

"Whereas, although they served their country when needed, Vietnam veterans were made to feel unwanted on returning home and have never been accorded the respect and gratitude that they deserve; and

"Whereas, many Vietnam veterans are suffering from terminal illnesses or long-term chronic illnesses which, in all probability, resulted from their exposure to Agent Orange; and

"Whereas, many Vietnam veterans are pleading for help; they are eloquent, angry and frustrated by a situation they view as unconscionable; and

"Whereas, the Joint Subcommittee Studying the Effects of Agent Orange on Citizens of the Commonwealth agrees that the evidence for Agent Orange causing an increase in chronic health problems among those who were exposed in Vietnam has gained enough significance to justify federal actions to compensate those who suffer from certain conditions and that a mechanism should be established to provide an objective, medically valid review of each case for the purpose of eligibility for compensation; Now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That the Congress of the United States is hereby memorialized to grant presumptive compensation to Vietnam veterans with conditions which have been proven more prevalent among this group such as chloracne, porphyria cutanea tarda, non-Hodgkin's lymphoma and lung cancer and to allow such compensation for additional conditions as the evidence accumulates. In addition, the Congress of the United States is requested to amend the Social Security Act to provide an exemption for funds awarded pursuant to the class action suit for the purposes of determining eligibility for federally established public assistance programs; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the Senate of the United States, and the members of the Virginia Delegation to the United States Congress that they may be apprised of the sense of the General Assembly of Virginia in this matter."

POM-555. A resolution adopted by the Senate of the State of Michigan; to the Committee on Veterans' Affairs:

"SENATE RESOLUTION No. 465

"A resolution to memorialize the President and the United States Congress to make an administrative change of policy to authorize and require the Veterans Administration to provide care to veterans, with service-related problems, incarcerated in state prison systems.

"Whereas, There are currently thousands of veterans with service-related problems incarcerated in state prison systems throughout our nation. The Veterans Administration, however, by regulation, does not provide medical care to penal institutions; and

"Whereas, Many state correctional institutions do not have personnel with the adequate training required to deal with such specialized service-related problems as Agent Orange exposure or Post-Traumatic Stress Disorder. The Veterans Administration's policy prohibiting outpatient services to those who have fought and suffered to protect our nation's freedom ignores its mandated responsibilities and discriminates against a specific group of individuals who, although incarcerated, retain the rights to veterans' benefits; and

"Whereas, Michigan's Senate Criminal Justice, Urban Affairs, and Economic Development Committee has initiated a dialogue with the Veterans Administration concerning the problems of incarcerated veterans in Michigan and throughout our nation. The Veterans Administration, however, has responded that it is against providing care at penal institutions, thereby shirking its responsibilities to a great number of our country's veterans; Now, therefore, be it

"Resolved by the Senate, That the members of this legislative body hereby memorialize the President and the United States Congress to require the Veterans Administration to provide on site care to state-incarcerated veterans with service-related problems; and be it further

"Resolved, That a copy of this document be presented to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and the Michigan congressional delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 2247: A bill to modify restrictions on the use of certain property conveyed to the Peninsula Airport Commission (Rept. No. 100-390).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 314: A bill to require certain telephones to be hearing aid compatible (Rept. No. 100-391).

By Mr. GLENN, from the Committee on Governmental Affairs, with amendments:

S. 2344: A bill to provide for the reauthorization of appropriations for the Office of Government Ethics, and for other purposes (Rept. No. 100-392).

By Mr. PELL, from the Committee on Foreign Relations, without amendment:

H.R. 4162: A bill to make the International Organizations Immunities Act applicable to the Organization of Eastern Caribbean States.

By Mr. PELL, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 270: A resolution paying special tribute to Portuguese diplomat Dr. de Sousa Mendes for his extraordinary acts of mercy and justice during World War II.

By Mr. PELL, from the Committee on Foreign Relations, with amendments and an amended preamble:

S. Res. 408: A resolution to condemn the use of chemical weapons by Iraq and urge the President to continue applying diplomatic pressure to prevent their further use, and urge the Administration to step up efforts to achieve an international ban on chemical weapons.

By Mr. PELL, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 442: A resolution expressing the sense of the Senate that the President should convene an International Conference on Combatting Illegal Drug Production, Trafficking, and Use in the Western Hemisphere.

By Mr. PELL, from the Committee on Foreign Relations, without amendment:

S. 2365: A bill authorizing the release of 86 USIA films with respect to the Marshall Plan.

By Mr. PELL, from the Committee on Foreign Relations, without amendment and with a preamble:

S.J. Res. 317: A joint resolution commemorating the bicentennial of the French Revolution and the Declaration of the Rights of Man and of the Citizen.

S. Con. Res. 120: A concurrent resolution urging the Government of Iran to respect the human rights of members of the Baha'i faith, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Sheldon J. Krys, of Maryland, to be an Assistant Secretary of State.

Paul D. Taylor, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Dominican Republic.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Paul D. Taylor.

Post: Ambassador to the Dominican Republic.

Contributions, amount, date, donee.

1. Self, none.

2. Spouse, none.

3. Children and spouses names: Jonathan B. Taylor, none; Katherine R., Taylor, none.

4. Parents names: Matthew M. Taylor, $5.00, o/a 1983, Gary Hart Campaign; Charles E. Taylor (deceased).

5. Grandparents names: deceased.

6. Brothers and spouses names: Gary C. Taylor (deceased), none; Rita R. (Mrs. Gary C.) Taylor, none.

7. Sisters and spouses names: Sandra T. Sharpe, none.

Richard Newton Holwill, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ecuador.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar years of the nomination and ending on the date of the nomination.

Nominee: Richard N. Holwill.

Post: Ambassador to the Republic of Ecuador.

Contributions, amount, date, donee.

1. Self: Richard, none.

2. Spouse: Margaret, none.

3. Children and spouses names: Kathryn, none; Claudia, none.

4. Parents names: Deceased, none.

5 Grandparents names: Deceased, none.

6. Brothers and spouses names: none.

7. Sisters and spouses names: Fahy Holwill Bailey, none; Clifford Bailey, none.

Walter Leon Cutler, of Maryland, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Walter L. Cutler.

Post: Ambassador to Saudi Arabia.

Contributions, amount, date, donee.

1. Self: none.

2. Spouse: none.

3. Children names: Allen Cutler, Thomas Cutler, Frederika Brookfield, none.

4. Parents names: Esther D. Bradley, Charles and Mariama Haydock, none.

5 Grandparents names: none.

6. Brothers and spouses names: none.

7. Sisters and spouses names: Sally D. Cutler, Marianna Ohe, none.

Robert South Barrett IV, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Djibouti.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Robert S. Barrett.

Post: Djibouti.

Contributions, amount, date, donee.

1. Self: None.

2. Spouse: $250, Nov. 22, 1987, Cong. Arthur Raven (R-S.C.).

3. Children and spouses names: Stepdaughter Jane Perry (wife of David Burden), none; Stepdaughter Elizabeth Bean (wife of Gordon Gourlay), none.

4. Parents names: Tupper and Marie Barrett (deceased), none.

5. Grandparents names: Robert and Viola Barrett (deceased), none.

6. Brothers and spouses names: Tupper Barrett, Jr., none.

7. Sisters and spouses names: Joan Barrett Beauvais (deceased), none.

Daniel Anthony O'Donohue, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Thailand.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Daniel Anthony O'Donohue.

Post: Thailand.

Contributions, amount, date, donee.

1. Self: none.

2. Spouse: none.

3. Children and spouses names: 1st Lt. and Mrs. Daniel J. O'Donohue, none. Miss Joan O'Donohue, none. L/Cpl John O'Donohue, none. Mr. Thomas P. O'Donohue, none. Mr. Michael J. O'Donohue, none.

4. Parents names: Deceased.

5. Grandparents names: Deceased.

6. Brothers and spouses names: Mr. and Mrs. Gerald O'Donohue, none.

7. Sisters and spouses names: Mr. and Mrs. Kenneth Whitehead:

	Amount
1984:	
5/12—National Republican Senatorial Committee	$25
5/12—New York Conservative Party	25
9/27—National Republican Senatorial Committee	25
1985:	
8/21—National Republican Senatorial Committee	25
10/6—Reagan/Bush	60
1986:	
1/18—New York Conservative Party	50
7/26—Friends of Congressman Frank Wolf	20
10/10—Friends of Congressman Frank Wolf	20
1987:	
2/11—Reagan/Deputy Assistant Secretaries	20
3/1—Falls Church/Citizens for a Better City	10
6/19—Senator Paul Trible	25
10/6—Reagan/Deputy Assistant Secretaries	20

Mr. and Mrs. Thomas Buchanan: none

Mary A. Ryan of Texas, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Swaziland.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Mary A. Ryan.

Post: Swaziland.

Contributions, amount, date, donee.

1. Self: none.

2. Spouse: N/A.

3. Children and spouses names: N/A.

4. Parents Names: William M. Ryan, deceased 1967; Cathryn V. Ryan, none.

5. Grandparents names: Joseph and Anna Ryan, deceased 1946 and 1928; Peter and Honora McCarthy, deceased 1927 and 1902.

6. Brothers and spouses names: N/A.

7. Sisters and spouses names: Margaret M. Ryan, deceased 1986, none. Kathleen M. Ryan Montgomery, none; George Montgomery, none.

Jeffrey Davidow, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zambia.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Jeffrey Davidow.

Post: Zambia.

Contributions, amount, date, donee.

1. Self: none.

2. Spouse: none.

3. Children and spouses names: Gwen Davidow (16), none; Audrey Davidow (14), none.

4. Parents names: Alfred Davidow (deceased 1978); Henrietta Davidow, none.

5. Grandparents names: Sigmund and Mary Wurf (deceased 1944, 1965); Abraham and Fanny Davidow (deceased 1926, 1954).

6. Brothers and spouses names: None.

7. Sisters and spouses names: Ann (Davidow) and Harvey Bornstein, none.

Richard Llewellyn Williams, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Mongolian People's Republic.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Richard L. Williams.

Post: Ambassador to People's Republic of Mongolia.

Contributions, amount, date, donee.

1. Self: none.

2. Spouse: none.

3. Children and spouses names: Marcus, none; Maria, none.

4. Parents names: Clara Williams, none; David Williams, deceased.

5. Grandparents names: Llewellyn and Louisa Williams, deceased; Sonke and Anna Peterson, deceased.

6. Brothers and spouses names: Glenn Williams (no spouse), none.

7. Sisters and spouses names: none.

Philip D. Winn, of Colorado, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Switzerland.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Philip D. Winn.

Post: U.S. Ambassador/Switzerland.
Contributions, amount, date, donee.
1. Self:

	Amount
1983:	
Dan Schaeffer	$1,000
Schaeffer for Congress	461
Reagan-Bush '84	1,000
Dan Schaeffer for Congress	1,000
Armstrong for Senate	[1][2][3]4,000
1984:	
Hank Brown	1,000
Kramer for Congress	1,000
Victory "84"	1,000
Cohen for Senate	1,000
Boschwitz for Senate	1,000
Mike Norton for Congress	1,000
Downs for Denver	500
Kemp Association (not for Federal candidates)*	5,000
David S. Monson for Congress	250
Viashe U.S. Senate*	[3]2,000
Lousma Senate*	[3]2,000
Humphrey Team*	[3]2,000
Bethune Refund	1,000
Bethune for Senate	[3]2,000
Jepson for Senate	[3]2,000
1985:	
Ken Kramer Committee (for primary)*	[3]2,000
Grassley '86 Committee	250
National Republican Senatorial Committee	10,000
President's Club	1,000
Kramer for Senate (for general election)*	[3]2,000
Symms	1,000
Hank Brown for Congress	100
Joel Hefley for Congress	1,000
Symms	1,000
1986:	
Hank Brown	200
D'Amato for Senate	1,000
McCain for Senate	1,000
Specter for Senate	1,000
Garn for Senate	1,000
Hank Brown	350
Mike Strang	250
Kasten for Senate	1,000
Joy Wood	250
Joel Hefley	1,000
Linda Chavez	1,000
Mike Norton	1,000
Henson Moore	1,000
Dan Schaeffer	1,000
1987:	
Danforth for Senate	1,000
Republican National Senatorial Trust	10,000
Jack Kemp for President	[3]2,000
Ally Milder for Congress	500
Joel Hefley for Congress	1,000

*Pursuant to conversation of 3/8/88 with Mr. Winn (WE Gressman, L/M, State Dept.).
[1]Contribution to primary election (½).
[2]Contribution to general election (½).
[3]Contribution made by husband and wife (½ each).

2. Spouse: Eleanor G. Winn, 0.
3. Children and spouses names: Jordan Winn, 0; Donna Aguirre and Joe Aguirre, $1,000, 1986, Ken Kramer for Senate.
4. Parents names: Etta A. Winn, deceased; Aaron B. Winn, deceased.
5. Grandparents names: Isaac and Esther Goldstein, deceased; Benjamin and Rachel Winn, deceased.
6. Brothers and spouses names: N/A.
7. Sisters and spouses names: Shirley Winn, deceased; Miriam Gere and Irwin Gere, deceased, 0.

Warren Zimmermann, of Virginia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Socialist Federal Republic of Yugoslavia.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Warren Zimmermann.
Post: Ambassador to Yugoslavia.
Contributions, amount, date, donee.
1. Self: Warren Zimmermann, none.
2. Spouse: Corinne C. Zimmermann, none.
3. Children and spouses names: Corinne A. Zimmermann, Warren Zimmermann, Jr., Elizabeth B. Zimmermann (none has made any contribution).
4. Parents names: Albert W. Zimmermann, deceased; Barbara Shoemaker Zimmermann, deceased.
5. Grandparents names: John Zimmermann, deceased; (don't know paternal grandmother's name—died c. 1917); Dr. William Toy Shoemaker; Mabel Warren Shoemaker, both deceased.
6. Brothers and spouses names: Dr. Albert W. Zimmermann, $100, 1984 local Republicans; Mrs. Lenore Zimmermann, $100, 1984 local Republicans.
7. Sisters and spouses names: Dr. Helene Z. Hill, $50, 1984 Hart campaign; Dr. George Hill, $100, 1984 Reagan campaign; Mrs. Melvin T. Johnson, $50, 1984 local Republicans; Mr. Melvin T. Johnson, $50, 1984 local Republicans.

E. Allan Wendt, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Senior Representative for Strategic Technology Policy in the Office of the Under Secretary of State for Coordinating Security Assistance Programs.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: E. Allan Wendt.
Post: Rank of Ambassador.
Contributions, amount, date, donee.
1. Self: $60, 10/86, Friends of Linda Chavez; $60, 9/86, Ed Zschau for U.S. Senate; $50, 6/86, Friends of Les Aspin; $25, 4/86, Friends of Jim Moody, $50, 10/84, Jim Moody for Congress; $50, 6/84, Friends of Les Aspin; $199, 2/84, Jim Moody for Congress; $100, 12/83, Reagan/Bush 84.
2. Spouse: N/A.
3. Children and spouses names: N/A.
4. Parents names: Dorothy S. Wendt, none; John A.F. Wendt, none, (father deceased).
5. Grandparents names: Deceased: John A.F. Wendt, Augusta E. Wendt, Thomas Stephenson, Bessie J. Stephenson.
6. Brothers and spouses names: John A.F. Wendt Jr., $100, 1986, Michael L. Strang; $100, 1984, Michael L. Strang; Dorothy N. Wendt, none; Stephen A. Wendt, none.
7. Sisters and spouses names; N/A.

Henry F. Cooper, of Virginia, for the rank of Ambassador during his tenure of service as United States Negotiator for Defense and Space Arms.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Henry F. Cooper.
Post: Ambassador and Chief Negotiator for Defense and Space Arms.
Contributions, amount, date, donee.
1. Self: Henry F. Cooper, none.
2. Spouse: Barbara Kays Cooper, none.
3. Children and spouses names: Laura Cooper (Mrs. Jonathan) Fuld, none; Cynthia Cooper (Mrs. Kevin) Worley, none; Scott Cooper, none.
4. Parents names: Mrs. Ruby Harris Cooper, Henry Franklyn Cooper, Sr. (deceased).
5. Grandparents names: Henry F. Cooper, Dora Mays Cooper, Joseph Frank Harris, Daisy Walton Harris, none (all deceased).
6. Brothers and spouses names: Walton M. Cooper (brother), none; Jane Lombard Cooper (wife), none.
7. Sisters and spouses names: None.

Stephen R. Hanmer, Jr., of Virginia, for the rank of Ambassador during his tenure of service as United States Negotiator for Strategic Nuclear Arms.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Stephen Read Hanmer, Jr.
Post: Rank of Ambassador as United States Negotiator for Strategic Nuclear Arms.
Contributions, amount, date, donee.
1. Self: $50.00, May 1987, Fairfax City Republican Party, Va.
2. Spouse: Lois B. Hanmer, $500.00, Dec. 20, 1987, James Dozier, Candidate for Congress, FL.
3. Children and spouses names: Susan E. and Daniel Alexander, Stephen R. Hanmer, III, Sara L. Hanmer, none.
4. Parents names: Deceased.
5. Grandparents names: Deceased.
6. Brothers and spouses names: None.
7. Sisters and spouses names: None.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. PELL. Mr. President, for the Committee on Foreign Relations, I also report favorably nomination lists in the Foreign Service which appeared in their entirety in the CONGRESSIONAL RECORD of June 14, 1988, and I ask that these nomination lists lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. McCONNELL:

S. 2542. a bill to provide for the use of unobligated abandoned mine land funds by the State of Kentucky, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS:

S. 2543. a bill to provide that certain nonprofit hospital insurers shall not be required to discount unpaid losses in computing taxable income for taxable years beginning

before January 1, 1989; to the Committee on Finance.

By Mr. RIEGLE (for himself, Mr. PROXMIRE, Mr. GARN, and Mr. DODD):

S. 2544. A bill to amend the federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 2545. A bill to redesignate Salinas National Monument in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. QUAYLE (for himself and Mr. HATCH):

S. 2546. A bill to provide child care assistance to low-income working parents; to amend the State Dependent Care Development Grants Act to provide block grants to States; to amend the Internal Revenue Code of 1986 to provide a refundable credit to parents for dependents under age 6; and for other purposes; to the Committee on Finance.

By Mr. GORE (for himself and Mr. SASSER):

S. 2547. A bill to designate the Federal Building in Knoxville, Tennessee as the John J. Duncan Federal Building".

By Mr. DIXON:

S. 2548. A bill to suspend temporarily the duty on certain glass bulbs until January 1, 1993; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. DANFORTH, Mr. GORE, Mr. PELL, Mr. BENTSEN, Mr. WEICKER, Mr. CHAFEE, Mr. LUGAR, Ms. MIKULSKI, Mr. MURKOWSKI, Mr. HEINZ, and Mr. GRAHAM):

S. 2549. A bill to promote highway traffic safety encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SYMMS:

S. 2550. A bill to amend title 23, United States Code, to eliminate a reduction of the apportionment of Federal-aid highway funds to certain States and for other purposes; to the Committee on Environment and Public Works.

By Mr. HARKIN (for himself, Mr. LUGAR, Mr. MELCHER, Mr. BOND, Mr. PRYOR, Mr. BUMPERS and Mr. DECONCINI):

S. 2551. A bill to provide additional enforcement authority for the Forest Service to deal with the production of controlled substances on the National Forest System, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. QUAYLE (for himself, Mr. PELL, Mr. KENNEDY, Mr. STAFFORD, and Mr. DODD):

S. Res. 444. A resolution to express the sense of the Senate on the Internal Revenue Service tax offset program; to the Committee on Finance.

By Mr. HEINZ (for himself and Mr. SPECTER):

S. Res. 445. A bill expressing the sense of the Senate in honoring the Cable Television Industry on the occasion of its 40th anniversary; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCONNELL:

S. 2542. A bill to provide for the use of unobligated abandoned mine land funds by the State of Kentucky, and for other purposes; to the Committee on Energy and Natural Resources.

USE OF CERTAIN FUNDS BY THE STATE OF KENTUCKY

Mr. McCONNELL. Mr. President, the fight for clean water in Butler County continues. Butler County, KY, has run into a number of obstacles in trying to achieve clean water for its residents. Mr. President, the water was fouled in Butler County because of surface mining. Initially, 3 years ago we were told by the Office of Surface Mining that certain areas of Butler County would qualify for funding from that Office. Subsequently, the decision was made that the area of Butler County did not qualify. Last year, Mr. President, we included in the appropriate appropriations bill report language that was supposed to take care of the problem but then the House of Representatives objected. Mr. President, the residents of Butler County are tired of waiting.

Mr. President, today I rise to introduce legislation that would provide those residents in Butler County, KY, who continue to live without water, the water they so desperately need. Since 1985, I have been working to see that Butler County is provided a sufficient water supply. The water quality and quantity in much of the county was adversely affected by pre-1977 mining which threatens public health, safety, and general welfare of the residents. Primarily, my efforts to obtain water have focused through the Office of Surface Mining [OSM] which can approve the allocation of abandoned mine land [AML] funds for water projects.

In 1985, I was successful in facilitating OSM's approval of 80 percent of the application submitted by the State on behalf of Butler County, a $1.4 million project. Unfortunately, the Gary Ridge Horsemill and Leonard Oak areas were dropped from the project as not having met the criteria for funding. The primary basis for rejecting Butler County's application was the contention that an absence of water caused by pre-1977 mining does not represent a health and safety problem. Inasmuch as water is essential to life itself, I found this argument absurd and continued my efforts to secure funding.

Last year I was able to insert report language in the Senate Appropriations Subcommittee on Interior and Related Agencies that would have allowed unobligated AML funds for the extension of the Butler County water project. However, this language was superseded by the conference report's directive that the U.S. Geological Survey Office [USGS] conduct a study of the probable causes of this county's water problem. Pursuant to this directive the subcommittee was provided an inconclusive opinion by USGS which said, based on the data, the agency was unable to determine whether or not pre-1977 surface mining had harmed Butler County's water supply. In fact, USGS stated that even given 2 or 3 years study and the expenditure of $500,000 to $1 million, they could not be confident that they would be able to determine the cause of the water problem. This is certainly ironic when one considers that the total cost of this project will be far less than the minimum amount projected for the USGS study.

Based on repeated statements by my constituents in Butler County, I firmly believe that surface mining prior to 1977 did harm the quality and quantity of water. Under these circumstances, this area should be given the benefit of the doubt. Through no fault of their own, these residents do not have the common convenience of running water—a convenience we often take for granted. For this reason, I am offering legislation that would allow the remaining OSM project funds to be used for an extension of the water project in Butler County, KY. This does not represent a new outlay of funding in fiscal year 1989 but is simply a reprogramming of current available funds.

Mr. President, I urge my colleagues to support my efforts to move this important legislation toward final passage.

Mr. President, I ask that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2542

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the Office of Surface Mining Reclamation and Enforcement shall make available to the State of Kentucky, for continuing activities associated with the Butler County water project, any Abandoned Mine Land Funds granted to the State of Kentucky's Abandoned Mine Land Program for use in reclamation project G-5167212, Subaccount No. 21200 which are not committed by the State by contract or obligation as of the date of enactment of this Act.

By Mr. BAUCUS:

S. 2543. A bill to provide that certain nonprofit hospital insurers shall not be required to discount unpaid losses in computing taxable income for taxable years beginning before January 1, 1989; to the Committee on Finance.

TAX TREATMENT OF CERTAIN NONPROFIT HOSPITAL INSURERS

● Mr. BAUCUS. Mr. President, I am today introducing a bill that is designed to help prevent a forthcoming crisis for our Nation's nonprofit hospitals. This looming crisis is especially threatening to nonprofit hospitals in rural and depressed urban centers. We are all familiar with the liability insurance crisis that in recent years has faced both hospitals and other institutions. Nonprofit hospitals, which are the backbone of the American health care system, have been forced to act in many ways to survive including the establishment by them of hospital-formed or sponsored insuring groups.

The operation of nonprofit hospitals is now jeopardized by the confiscatory tax burden that was inadvertently placed on their insurers by the Tax Reform Act of 1986. The harsh tax treatment of those insurers, most of which are owned or sponsored by the nonprofit hospitals, will substantially reduce, and may eliminate, their earnings. Several companies, for example, the Health Providers Insurance Co. of Chicago, IL will have effective tax rates of approximately 100 percent, according to a prominent accounting firm. Accordingly, the insurers may be forced to dramatically increase premiums to the hospitals. If that were to happen, the nonprofit hospitals would likely choose to cease high risk but necessary services because they are unable to pass on the substantially higher insurance premiums to their patients. For most rural and urban centers this action would be devastating. Few costs can be passed along to Medicare patients in that, due to Federal budgetary constraints, diagnostic-related-group [DRG] payments are not expected to be greatly increased. Costs are now also difficult to pass on to non-Medicare patients because many private health care insurers base reimbursable expenses on DRG payments or some other form of discount.

This hardship was created by a provision in the Tax Reform Act that prevents the nonprofit hospital-formed insurers from fully deducting additions made to reserve accounts established to provide for future claims. As a result of the Tax Reform Act, these insurers can only deduct the discounted value of those reserves.

The unintended consequences of this action have been staggering. We intended to ensure that commercial insurance carriers assumed their fair share of taxes through the adoption of this provision. Discounting was adopted to reflect the fact that some claims are paid in the future and that premiums can be invested until needed to pay those claims. Commercial insurers may offset the increased tax liability brought about by reserve discounting with net operating losses or can spread increased costs among many lines of business. With hospital-formed insurers, companies that were formed as a result of the insurance crisis and provide medical malpractice insurance only, this is unfortunately not the case. Unprecedented tax rates are being imposed overnight.

This tightly written legislation and its counterpart, H.R. 4555, is designed merely to delay the start of discounting of the loss reserve deduction for qualified nonprofit hospital insurers for 2 years. The relief is elective, because certain insurers, whose reserves are declining, would be harmed by such a delay. It is the companion to H.R. 4555 with a minor technical change to ensure that the 2-year delay is effectuated. The delay is designed to coordinate with a Department of the Treasury study of the effect of discounting on the different segments of the insurance industry, that is to be completed in 1989 so that permanent solutions may be adopted in the future. The Committee on Ways and Means last year did acknowledge that worker's compensation funds were uniquely situated and provided, among other things, a similar 2-year deferral to those insurers in the 1986 act. The relief afforded in this bill should be given effect, not only out of fairness, but to also avert the discontinuation of the high risk yet vital operations of our country's nonprofit hospitals.●

By Mr. RIEGLE (for himself, Mr. PROXMIRE, Mr. GARN, and Mr. DODD):

S. 2544. A bill to amend the Federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement; to the Committee on Banking, Housing, and Urban Affairs.

INTERNATIONAL SECURITIES ENFORCEMENT COOPERATION ACT

● Mr. RIEGLE. Mr. President, I am pleased to introduce the International Securities Enforcement Cooperation Act of 1988, together with the chairman of the full committee, Senator PROXMIRE, the ranking minority member and former chairman of the full committee, Senator GARN, and my distinguished colleague from Connecticut, Senator DODD. This bill would provide the Securities and Exchange Commission with important tools to deal with enforcement problems arising from the internationalization of the securities markets.

The world's securities markets have experienced a rapid internationalization during recent years, including a several-fold growth of cross-border trading. During the same period, Federal officials have prosecuted an extraordinary number of celebrated insider trading cases, such as those against Ivan Boesky and Dennis Levine.

Unfortunately, there is a relationship between internationalization and securities fraud, such as insider trading. While internationalization of the securities markets has expanded opportunities for legitimate investment activities, it has also provided new means for persons to engage in fraud.

The Levine case is a prime example. Mr. Levine purchased and sold securities based on confidential information that he had stolen from his investment banking clients. He sought to conceal this illegal insider trading by executing transactions through a secret bank account in the Bahamas. Mr. Levine ultimately was apprehended because SEC officials persuaded the Bahamian Attorney General that this country's secrecy laws should not obstruct the Commission's investigation. But not all foreign authorities have been as willing to cooperate with the SEC as was the Bahamian Attorney General.

The legislation that I am proposing today addresses that problem by facilitating international cooperation between securities law regulators. It recognizes that such cooperation is the most efficient and effective way to deter and apprehend insider traders and other law violators.

The bill would amend the Securities Exchange Act of 1934 to provide that the SEC, at the request of its counterpart in a foreign country, may require persons or entities located in this country to produce evidence relating to a potential violation of the foreign country's securities laws. The foreign counterpart must agree to provide the Commission with similar investigative assistance. At the present time, the SEC lacks such authority, and can compel the production of documents and evidence only when it appears that a violation of the U.S. securities laws may have occurred.

The reason for this legislation should be apparent: As the world markets become increasingly intertwined, foreign regulators will need to be able to assist one another on an ever increasing basis. This legislation provides the first step for facilitating that cooperation; once passed it will be up to the foreign authorities to complete the circle by obtaining parallel authority. The SEC has already taken the initiative in this regard with regulators in Canada. Indeed, in January of this year, the SEC entered into a bilateral agreement, known as a memorandum of understanding [MOU], with the securities commissions of Ontario, Quebec and British Columbia, which provides for such reciprocity. The MOU states that the signatories will investigate a law violation at the request of the foreign authorities to the extent that such an investigation is authorized by statute. This legislative proposal would amend the Securities Exchange Act of 1934 to authorize such an investigation by the SEC.

In addition to its MOU with the Canadian provinces, the SEC has entered into MOU's with Switzerland, the United Kingdom, and Japan. I believe that, if this legislation is enacted, the Commission will be better positioned to expand these MOU's to provide for mutual investigative authority similar to that included in the Canadian MOU. Moreover, other foreign countries will have a strong inducement to enter into bilateral assistance agreements with the SEC if that foreign authority's agreement to cooperate is a precondition which must be satisfied before the SEC can provide investigative assistance.

Such an expansion of both the quality and quantity of MOU's would be a significant achievement. These agreements establish procedures governing the sharing of information between securities regulators. The MOU's thereby avoid the confrontation that occurs when the SEC is forced to seek a court order compelling a foreign bank to disclose information that is protected by secrecy laws. Instead, the MOU's permit a cooperative approach between securities authorities.

This legislation also sends an important message to securities regulators throughout the world. It says to them that, in the view of the U.S. Congress, securities fraud is no longer confined within any single nation's borders, but is an international problem. And it demonstrates that the Congress wants the SEC, this country's securities law enforcement agency, to take the lead in a cooperative approach to dealing with the problem.

The legislation also contains three other provisions relating to international securities enforcement. First, the bill would amend the 1934 act to enable the SEC to maintain the confidentiality of certain foreign evidence. In some cases, foreign authorities have been willing to share confidential information with the SEC, but are unwilling to permit the SEC to make such information public. Indeed, under some foreign laws, it is illegal to make certain confidential information public. Under U.S. law, however, the SEC is governed by the Freedom of Information Act, which, unless certain specific exemptions are satisfied, requires disclosure of documents regardless of their confidential status under foreign law. In order that the SEC might be able to obtain otherwise unobtainable confidential documents from foreign countries for law enforcement purposes, I believe it would be appropriate to carve out a narrow area in which the Freedom of Information Act would not apply.

Second, the bill would make explicit the SEC's rulemaking authority to provide documents and other information to foreign authorities, as well as to domestic authorities. There are certain provisions of the Federal securities laws which arguably preclude the disclosure of certain nonpublic documents. In view of the significance of this issue to the Commission's efforts to cooperate both with foreign and domestic securities officials, it is important that we enact legislation that would provide appropriate relief from these nondisclosure provisions.

Finally, the bill would provide the SEC with the authority to censure, revoke the registration of, or impose employment restrictions upon a securities professional who is found by a foreign court or foreign securities authority to have engaged in illegal or improper conduct. The SEC has such authority as to findings of illegal or improper activity in this country, but its authority as to improper activity abroad is limited. I believe that the United States should not become a haven for securities professionals who violate foreign laws. The legislation would make certain that would not happen.

Mr. President, our securities markets are the best in the world. We need to make sure that the SEC has the tools to keep them among the cleanest and fairest in the world. I therefore urge my colleagues to join me in sponsoring this legislation and moving this measure toward passage. I ask unanimous consent that the text of the bill, a summary, a section-by-section analysis and a memorandum in support of this bill appear at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2544

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "International Securities Enforcement Cooperation Act of 1988".

SEC. 2. TABLE CONTENTS.

The contents of this Act are as follows:

TITLE I—ASSISTANCE TO FOREIGN SECURITIES AUTHORITIES

SEC. 101. INVESTIGATORY ASSISTANCE TO FOREIGN SECURITIES AUTHORITIES.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. §78a *et seq.*) is amended—

(a) by adding after and below section 3(a) the following:

"(50) The term "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters";

(b) by redesignating subsection 21(a) as subsection 21(a)(1); and

(c) by adding after and below subsection 21(a)(1) the following:

"(2) On request from a foreign securities authority, the Commission may, in its discretion, provide assistance in accordance with this paragraph if the requesting authority states: (a) that it is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that it administers or enforces and (b) agrees to provide similar assistance to the Commission in securities matters. The Commission may conduct such investigation as it deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether compliance with the request would prejudice the public interest of the United States."

SEC. 102. RELEASE OF RECORDS BY THE COMMISSION.

Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. § 78x) is amended—

(a) by striking from subsection 24(b) "Nothing in this subsection shall authorize the Commission to withhold information from the Congress.";

(b) by adding after and below subsection 24(b) the following:

"(c) Notwithstanding any other provision of law, the Commission may, in its discretion and upon a showing that such information is needed, provide all "records" (as defined in subsection (a) above) and other information in its possession to such persons, both domestic and foreign, as the Commission by rule deems appropriate;

"Provided, That the person receiving such records or information provides such assurances of confidentiality as the commission deems appropriate; and

"Provided further, That nothing in this section shall alter the Commission's responsibilities under the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.,* as limited by Section 21(h) of the Securities Exchange Act, 15 U.S.C. 78u(h), with respect to transfers of records covered by such statutes.

"(d) Notwithstanding the provisions of the Freedom of Information Act, 5 U.S.C. 551 *et seq.,* or of any other law, the Commission shall not be compelled to disclose records obtained from a foreign securities authority if the foreign securities authority has in good faith represented to the Commission that public disclosure of such records would be contrary to the laws of the foreign country from which they were obtained:

"(e) Nothing in this section shall prevent the Commission from complying with a request for information from the Congress or from complying with an order of a court of the United States in an action commenced by the United States or the Commission."

TITLE II—FOREIGN MISCONDUCT BY SECURITIES PROFESSIONAL IN FOREIGN COUNTRY AS BASIS FOR RESTRICTING PROFESSIONAL'S ACTIVITIES IN THE U.S. SECURITIES INDUSTRY

SEC. 201. SANCTIONS AGAINST BROKER OR DEALER, ASSOCIATED PERSONS, OR PERSONS SEEKING ASSOCIATION.

The Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*) is amended as follows:

(a) Subsection 15(b) (15 U.S.C. 78o) is amended—

(1) by inserting in subparagraph 15(b)(4)(B) after "misdemeanor" the folloiwng: "or has been convicted within ten years of a substantially equivalent crime by a foreign court of competent jurisdiction";

(2) by inserting in subparagraph 15(b)(4)(B)(i) after "burglary," the following: "any substantially equivalent activity however denominated by the laws of the relevant foreign government";

(3) by inserting in subparagraph 15(b)(4)(B)(ii)

(A) after "transfer agent," the following: "foreign person performing a function substantially equivalent to any of the above,";

(B) after "(7 U.S.C. 1 *et seq.*)" the following: "or any equivalent foreign statute or regulation";

(4) by inserting in subparagraph 15(b)(4)(B)(iii) after "securities," the following: "or substantially equivalent activity however denominated by the laws of the relevant foreign government,";

(5) by inserting in subparagraph 15(b)(4)(B)(iv) after "United States Code" the following: ", or a violation of a substantially equivalent foreign statute.";

(6) by inserting in subparagraph 15(b)(4)(C)—

(A) after "transfer agent," "foreign person performing a function substantially equivalent to any of the above,";

(B) after "Commodity Exchange Act" each time it appears, "or any substantially equivalent foreign statute or regulation"; and

(C) after "insurance company," "foreign entity substantially equivalent to any of the above,"; and

(7) by adding after and below subparagraph 15(b)(4)(F) the following:

"(G) has been found by a foreign financial regulatory authority to have—

(1) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein; (ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; (iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision."

(b) Subsection 15(b)(6) is amended by striking out "(A), (D), or (E)" and inserting in lieu thereof, "(A), (D), (E), or (G)".

(c) Subparagraph 3(a)(39)(A) is amended by inserting—

(1) after "self-regulatory organization," the following "foreign equivalent, foreign or international securities exchange,"; and

(2) after both "(7 U.S.C. 7)" and "(7 U.S.C. 21)", the following: "or any substantially equivalent foreign statute or regulation,";

(3) after "contract market", the following: "or foreign equivalent";

(d) Subparagraph 3(a)(39)(B) is amended by striking out "or" after "Commission" and after "government securities broker," each time it appears, by inserting a comma after "Commission", and by inserting—

(1) after "appropriate regulatory agency," the following: ", or foreign financial regulatory authority";

(2) after "government securities dealer" the first time it appears, the following: "or limiting his activities as a foreign person performing a function substantially equivalent to any of the above";

(3) after "government securities dealer" the second time it appears, the following: ", or foreign person performing a function substantially equivalent to any of the above;

(4) after "(7 U.S.C. 1 et seq.)" a comma in lieu of the semicolon, and thereafter the following: "or is subject to an order by a foreign regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;".

(e) New subparagraph 3(a)(39)(D) is added by inserting after and below subparagraph 3(a)(39)(C) the following:

"(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;".

(f) Subparagraphs 3(a)(39)(D) and 3(a)(39)(E) are redesignated as 3(a)(39)(E) and 3(a)(39)(F), respectively.

(g) The subparagraph redesignated as 3(a)(39)(E) by this section is amended by striking out "(A), (B), or (C)" and inserting in lieu thereof "(A), (B), (C), or (D)".

(h) The subparagraph redesignated as 3(a)(39)(F) by this section is amended by striking out "(D) or (E)" and inserting in lieu thereof "(D), (E), or (G)".

Sec. 202. DEFINITION OF FOREIGN FINANCIAL REGULATORY AUTHORITY.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a) is amended by adding after and below subsection 3(a)(50) the following:

"(51) The term "foreign financial regulatory authority" means any (1) foreign securities authority, (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (3) membership organization a function of which is to regulate participation of its members in activities listed above."

SEC. 203. CONFORMING AMENDMENTS.

The Securities Exchange Act of 1934 (15 U.S.C. §78a *et seq.*) is amended by striking out "(A), (D), or (E)" in subsections 15B(c)(2) and 15B(c)(4) and in subparagraphs 15C(c)(1)(A), 15(C)(c)(1)(C), 17A(c)(3)(A), and 17A(c)(3)(C) and inserting in lieu thereof "(A), (D), (E), or (G)" and in subsection 15C(f)(2) by striking out "or the rules or regulations under any such other provision" and inserting in lieu thereof "the rules or regulations under any such other provision, or investigations pursuant to section 21(a)(2) of this title to assist a foreign securities authority".

SEC. 204. SANCTIONS AGAINST INVESTMENT ADVISERS OR PERSONS ASSOCIATED OR SEEKING ASSOCIATION WITH A REGISTERED INVESTMENT ADVISER OR INVESTMENT COMPANY.

(a) Section 9(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(b)) is amended by adding after and below subsection 9(b)(3) the following new subsections:

"(4) has been found by a foreign financial regulatory authority to have—

"(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

"(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

"(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade,

"(5) within ten years has been convicted by a foreign court of competent jurisdiction of a crime, however demoninated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

"(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdication from acting in any of the capacities, set

forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security."

"(b) Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended by inserting—

(1) in subsection 203(e)(2) after "misdemeanor" the following: "or has been convicted within ten years of a substantially equivalent crime by a foreign court of competent jurisdiction";

(2) in subparagraph 203(e)(2)(A) after "burglary," the following: "any substantially equivalent activity however denominated by the laws of the relevant foreign government,";

(3) in both subparagraph 203(e)(2)(B) and subsection 203(e)(3) after "transfer agent" the following: "foreign person performing a function substantially equivalent to any of the above,"; and after "Commodity Exchange Act" each time it appears, the following: "or any substantially equivalent statute or regulation";

(4) in subparagraph 203(e)(2)(C) after "securities" the following: "or substantially equivalent activity however denominated by the laws of the relevant foreign government";

(5) in subparagraph 203(e)(2)(D) after "United States Code" the following:", or a violation of a substantially equivalent foreign statute";

(6) in subsection 203(e)(3) after "court of competent jurisdiction" the following: ", including any foreign court of competent jurisdiction" and after "insurance company" the following: "foreign entity substantially equivalent to any of the above";

(7) in subsection 203(e)(5) after "this title" the following: "the Commodity Exchange Act,";

(8) after and below subsection 203(e)(6) the following new subsection:

"(7) has been found by a foreign financial regulatory authority to have—

"(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

"(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

"(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision."

(c) Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f) is amended by striking out "paragraph (1), (4), or (5)" and inserting in lieu thereof "paragraph (1), (4), (5), or (7)""

SEC. 205. DEFINITIONS OF FOREIGN SECURITIES AUTHORITY AND FOREIGN FINANCIAL REGULATORY AUTHORITY.

(A) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding after and below subsection 2(a)(48) the following new subsections:

"(49) "foreign securities authority" means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

"(50) "foreign financial regulatory authority" means any (1) foreign securities authority, (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (3) membership organization a function of which is to regulate the participation of its members in activities listed above."

(b) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding after and below subsection 202(a)(22) the following new subsections:

"(23) "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

"(24) "foreign financial regulatory authority" means any (1) foreign securities authority, (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (3) membership organization a function of which is to regulate participation of its members in activities listed above."

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED LEGISLATION

Section 101. Section 101 of the Act amends the Securities Exchange Act of 1934 ("Exchange Act") to authorize the Commission to conduct investigations on behalf of foreign securities authorities. Thus, this Section expands the Commission's investigative powers so that it may investigate certain matters in the United States related to foreign securities law violations as to which the Commission lacks jurisdiction. Such authority will enhance international cooperation in enforcement of securities laws.

Section 101(a). Subsection 101(a) amends Section 3(a) of the Exchange Act by adding new Subsection 3(a)(50) defining "foreign securities authority." Such an authority is defined as any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters. It is intended that this definition will encompass: (a) foreign independent regulatory agencies similar to the Commission, such as the Commission des Operations de Bourse in France, as well as foreign Executive agencies, such as the British Secretary of State for the Department of Trade and Industry, which hold express statutory authority to enforce securities laws; (b) general policing entities, such as the Swiss Federal Department of Justice and Police, which enforce commercial, corporation and financial laws or other generalized fraud statutes; and (c) self-regulatory organizations ("SRO's"), such as the U.K. Securities and Investment Board (as of April 1988), to the extent the SRO is not merely a membership organization but also "administers" or "enforces" securities laws.

Section 101(b). Subsection 101(b) is a technical amendment that redesignates Subsection 21(a) of the Exchange Act as Subsection 21(a)(1). This change is necessitated by the addition of Subsection 21(a)(2) to the Exchange Act, made by Subsection 101(c).

Section 101(c). Subsection 101(c) adds new Subsection 21(a)(2) to the Exchange Act, authorizing the Commission to provide assistance to foreign securities authorities upon the foreign authority's request. The requesting authority must state that it is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that it administers or enforces. The requesting authority must also agree that it will provide similar investigative assistance to the Commission. The Commission has discretion in deciding whether to conduct an investigation on behalf of the foreign securities authority. In deciding whether to grant assistance, the Commission is required to consider whether compliance with the request would prejudice the public interest of the United States. This subsection will provide the basis for achieving agreements with foreign securities authorities in which they agree to provide assistance to the Commission by conducting investigations at the request of the Commission.

Section 102. Section 102 of the Act amends Section 24 of the Exchange Act by adding new subsections authorizing the Commission to withhold from disclosure documents furnished to the Commission by foreign securities officials upon certain conditions.

Section 102(a). Subsection 102(a) is an amendment necessitated by the scheme of amended Section 24 of the Exchange Act, to which the Act adds several subsections. It strikes from Subsection 24(b) the sentence, "Nothing in this subsection shall authorize the Commission to withhold information from the Congress." That sentence becomes part of new Subsection 24(e) of the Exchange Act under Subsection 102(b) of the Act.

Section 102(b). Subsection 102(b) adds new Subsection 24(c) to the Exchange Act. This subsection clarifies the Commission's authority to provide records, as defined in Exchange Act Subsection 24(a), in its discretion and upon a showing that the information is needed, to any persons deemed appropriate by the Commission by rule. The subsection conditions this discretionary authority on the person receiving the information assuring its confidentiality as the Commission deems appropriate. It further clarifies that this section does not alter the Commission's responsibilities under the Right to Financial Privacy Act, 12 U.S.C. 3401 et seq., as limited by Section 21(h) of the Exchange Act, with respect to transfers of records covered by these statutes. Subsec-

tion 102(b) of the Act also adds new Subsection 24(d) to the Exchange Act. Subsection 24(d) states that notwithstanding the provisions of the Freedom of Information Act or of any other law, the Commission shall not be compelled to disclose records obtained from a foreign securities authority, if the foreign authority has in good faith represented to the Commission that public disclosing of such records would be contrary to the laws of the foreign country from which they were obtained. This amendment will allow the Commission to obtain otherwise unobtainable confidential documents from foreign countries for law enforcement purposes. As mentioned above, Subsection 102(b) of the Act also adds new Subsection 24(e). This subsection clarifies that nothing in Section 24 authorizes the Commission to withhold information from Congress or not to comply with an order of a United States court in an action initiated by the United States or the Commission.

Section 201. Section 201 of the Act amends the Exchange Act to authorize the Commission to impose sanctions on brokers or dealers, their associated persons, and individuals seeking to become associated persons of brokers or dealers on the basis of misconduct in a foreign country.

Section 201(a). Subsection 201(a) of the Act amends Exchange Act Section 15(b), the Exchange Act's registration provision. Subsection (a)(1) provides for Commission censure of, limitations on the activities of or revocation or suspension of the registration of brokers or dealers, based upon a conviction within ten years rendered by a foreign court of competent jurisdiction of a crime which is substantially equivalent to a felony or misdemeanor as provided by Subparagraph 15(b)(4)(B). The Act thus clarifies the Commission's authority to consider offenses from foreign jurisdictions that might not classify crimes formally as felonies or misdemeanors, *e.g.*, non-common law jurisdictions.

Subparagraph 15(b)(4)(B)(i) lists offenses involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense as within the class of felonies and misdemeanors that permit the Commission to sanction brokers or dealers. Subsection (a)(2) of the Act amends Subparagraph 15(b)(4)(B)(i) by including within this list any substantially equivalent activity, however denominated by the laws of a foreign government. The Act therefore clarifies the Commission's authority to consider such activities even if the foreign government does not denominate them as precisely the same offenses that they constitute within the United States.

Subparagraph 15(b)(4)(B)(ii) also allows the Commission to consider offenses arising out of the conduct of various securities-related businesses, including the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank insurance company, fiduciary, or transfer agent. Subsection (a)(3)(A) amends Subparagraph 15(b)(4)(B)(ii) by including any substantially equivalent activity, however denominated by the laws of a foreign government. The Act accordingly clarifies the Commission's authority to consider such offenses regardless of the employment terms involved, which may differ in foreign countries. Subparagraph 15(b)(4)(B)(ii) also permits the Commission to consider offenses arising out of the conduct of the business of an entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Subparagraph (a)(3)(B), therefore, also amends Subparagraph 15(b)(4)(B) (ii) by including any equivalent foreign statute or regulation. The Act thus clarifies the Commission's authority to consider foreign offenses arising out of the commodities trading business.

Subparagraph 15(b)(4)(B)(iii) includes larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, and misappropriation of funds or securities within the list of offenses that trigger Commission sanctions. Subsection (a)(4) of the Act adds any substantially equivalent activity, however denominated by the laws of a foreign government. Subsection (a)(4) of the Act clarifies Commission authority on this point in the same way and for the same reasons as Subsection (a)(2).

Subparagraph 15(b)(4)(B)(iv) includes violations of sections 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18 of the U.S. Code within the list of offenses that the Commission may consider. These provisions concern concealment of assets, false oaths and claims, and bribery in connection with bankruptcy; mail fraud; wire fraud; counterfeiting and forgery; and fraud and false statements, respectively. Subsection (a)(5) amends Subparagraph 15(b)(4)(B)(iv) by including a violation of a substantially equivalent foreign statute. Subsection (a)(5) of the Act clarifies Commission authority on this point in the same way and for the same reasons as Subsection (a)(2).

Subparagraph 15(b)(4)(C) also empowers the Commission to impose sanctions on the basis of permanent or temporary injunctions against acting in the securities-related or commodities-related capacities enumerated in subparagraph 15(b)(4)(B)(ii) and against engaging in or continuing any conduct or practice in connection with such activity or in connection with the purchase or sale or any security. Subparagraph (a)(6)(A) amends Subparagraph 15(b)(4)(C) by including foreign persons performing substantially equivalent functions, and Subparagraph (a)(6)(C) includes substantially equivalent foreign entities. The Act thereby clarifies the Commission's authority on this point in the same way and for the same reasons as Subsection (a)(3)(A). Subparagraph (a)(6)(B) amends Subparagraph 15(b)(4)(C) by including any foreign statute or regulation substantially equivalent to the Commodity Exchange Act, thus clarifying the Commission's authority with the same basis and purpose as Subparagraph (a)(3)(B).

Subsection (a)(7) adds new Subparagraph 15(b)(4)(G) to the Exchange Act. Subparagraph (G) empowers the Commission to base sanctions on findings by a foreign securities authority of (1) false or misleading statements in registration or reporting materials filed with the foreign securities authority, (2) violations of statutory provisions concerning securities or commodities transactions, or (3) aiding, abetting, or otherwise causing another person's violation of such foreign securities or commodities provisions, or failing to supervise a person who has committed such a violation. Subparagraph (G) substantially parallels the provisions of existing Subparagraphs 15(b)(4)(A), (D), and (E) concerning such findings by the Commission or other securities and commodities regulatory authorities.

Section 201(b). Subsection 201(b) of the Act amends Subsection 15(b)(6) of the Exchange Act, which authorizes the Commission to censure, limit the activities of, or bar or suspend from association with a broker or dealer any person who has committed or omitted any act or omission enumerated in Subparagraph (A), (D), or (E), has been convicted of any offense enumerated in Subparagraph (B), or has been enjoined as specified in Subparagraph (C). By adding to Subparagraph 15(b)(6) findings by a foreign securities authority under new Subparagraph (G), Section 201(b) authorizes the Commission to consider such findings when imposing sanctions upon persons who are, or who seek to become, associated persons of a broker or dealer.

Section 201(c). Subsection 201(c) of the Act amends Section 3(a)(39) of the Exchange Act, which concerns statutory disqualification from self-regulatory organization ("SRO") membership. Under the present statutory and regulatory scheme, a person subject to statutory disqualification is not excluded automatically from the securities business. However, when such a person seeks to become associated with a member of an SRO, that SRO and the Commission have the opportunity, under Exchange Act Subsection 15A(g)(2) and Rule 19h-1 thereunder, to give special review to the person's employment application or to restrict or prevent reentry into the business where appropriate for the protection of investors. This structural use of statutory disqualification does not change with the Act's amendments. Rather, the amendments expand, by incorporation, the list of findings that result in statutory disqualification.

Subsection (c) amends Subparagraph 3(a)(39)(A), which now lists expulsion or suspension from membership or participation in, or association with a member of, an SRO, commodity contract market, or futures association as resulting in statutory disqualification, to include exclusion in the described manner from the foreign equivalent of an SRO, foreign or international securities exchange, or a foreign contract market, board of trade, or futures association.

Section 201(d). As amended by Subsection 201(d), Subparagraph 3(a)(39)(B) undergoes similar expansion. It currently refers to orders of the Commission or another appropriate regulatory agency suspending or revoking registration as a broker, dealer, municipal securities dealer, or government securities dealer or broker. The amendments to Subsection 3(a)(39) apply to brokers, dealers, municipal securities dealers, government securities brokers, and government securities dealers of any nationality, because these terms are defined in Exchange Act Subsections 3(a)(4, 3(a)(5), 3(a)(30), 3(a)(43), and 3(a)(44) without reference to nationality. Under Subsection 201(d), orders by an appropriate foreign financial regulatory authority, which is defined in Section 202 of the Act, denying, suspending, or revoking authority to engage in transactions in contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market, board of trade, or foreign equivalent also will result in statutory disqualification.

Section 201(e). Under the Act, Subparagraph 3(a)(39)(C) does not change. However, Subparagraph (D) becomes Subparagraph (E), and subsection 201(e) adds new Subparagraph (D), which includes among the conditions that result in statutory disqualification findings by a foreign or international securities exchange, foreign securities authority, or other foreign authority empowered by a foreign government to administer or enforce its laws relating to fi-

nancial transactions, to the effect that any individual, by his conduct, was a cause of a suspension, expulsion, or order by the foreign securities authority or other foreign financial regulator or administrator.

Section 201(f). Subsection 201(f) of the Act is a technical amendment that redesignates Subparagraphs 3(a)(39)(D) and (E) of the Exchange Act as 3(a)(39)(E) and (F), respectively. Subsection 201(e) of the Act necessitates these changes.

Section 201(g). Subsection 201(g) of the Act amends redesignated Subparagraph 3(a)(39)(E) of the Exchange Act to include a reference to new Subparagraph (D).

Section 201(h). Subsection 201(h) of the Act amends redesignated Subparagraph 3(a)(39)(F) of the Exchange Act to include a reference to new subparagraph 15(b)(4)(G) added by Subsection 201(a)(7) of the Act.

Section 202. In order to ensure that orders of any regulatory body, foreign or domestic, with authority to suspend or revoke registration or its equivalent are available to the Commission, Section 202 of the Act adds a new term, "foreign financial regulatory authority," as Subsection 3(a)(51) of the Exchange Act. A "foreign financial regulatory authority" is defined to include any foreign securities authority, which is defined in Subsection 101(a) of the Act; governmental or regulatory bodies empowered to administer or enforce laws relating to enumerated financial matters; and membership organizations that regulate members' participation in financial matters. Pursuant to the Act's amendments to Exchange Act Subsection 3(a)(39), orders of foreign financial regulatory authorities are deemed sufficient to result in "statutory disqualification," as will such an order limiting registration of the foreign equivalent of any of the enumerated entities.

Section 203. Section 203 of the Act makes conforming amendments to various provisions of the Exchange Act. Subsections 15B(c)(2) and (4), which concern the Commission's disciplinary authority over municipal securities dealers and their associated persons, and which parallel Subsections 15(b)(4) and (6) concerning brokers, dealers, and their associated persons, are amended to include a reference to new Subparagraph 15(b)(4)(G). Findings of misconduct by a foreign securities authority thus can support Commission sanctions against municipal securities dealers and their associated persons.

Subparagraphs 15C(c)(1)(A) and (C), which concern the Commission's sanctioning authority over government securities brokers and dealers and their associated persons, and which also parallel Subsections 15(b)(4) and (6), are amended to include a reference to new Subparagraph 15(b)(4)(G), for the same reason as above.

Subparagraphs 17A(c)(3)(A) and (C), which concern the Commission's sanctioning authority over transfer agents and their associated persons, and which further parallel Subsections 15(b)(4) and (6), are amended to include a reference to new Subparagraph 15(b)(4)(G) for the same reason.

Subsection 15C(f)(2) of the Exchange Act currently forbids the Commission from investigating or taking any other action under the Exchange Act against a government securities broker or dealer or its associated persons for violations of Section 15C or the rules or regulations thereunder. The exception is where the Commission, rather than one of the banking regulators (Comptroller of the Currency for national banks, Board of Governors of the Federal Reserve System for state member banks, Federal Deposit Insurance Corporation for insured nonmember state banks, and Federal Home Loan Bank Board for federally insured savings and loan associations), is the appropriate regulatory agency for the government securities broker or dealer. Subsection 15C(f)(2), by its own terms, also does not limit the Commission's authority with respect to violations of any other provisions of the Exchange Act or of corresponding rules or regulations. Section 203 of the Act extends this prohibition by forbidding limitations on investigations pursuant to new Exchange Act Section 21(a)(2) to assist a foreign securities authority, which are authorized by Section 101 of the Act.

Section 204. Section 204 of the Act amends the Investment Company Act of 1940 ("1940 Act") and the Investment Advisers Act of 1940 ("Advisers Act") to clarify and strengthen the Commission's authority to impose sanctions, on the basis of violations of foreign law, on investment advisers or on persons associated or seeking to become associated with an investment adviser or a registered investment company.

Section 204(a). Section 204(a) of the Act amends Section 9(b) of the 1940 Act. Section 9(a) of the 1940 Act generally prohibits a person convicted of a felony or misdemeanor involving securities or the securities business or subject to a temporary or permanent injunction restricting his ability to engage in the securities business from serving as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, unit investment trust, or face-amount certificate company. The automatic statutory disqualification in Section 9(a) is supplemented by the Commission's authority under Section 9(b). Under Section 9(b), the Commission may, after notice and opportunity for hearing, prohibit a person from serving in any of the capacities cited in Section 9(a) or as an affiliated person of a registered investment company's investment adviser, depositor, or principal underwriter if the person has willfully caused a false or misleading statement to be made in any registration statement, application, or report filed with the Commission or if the person has willfully violated or willfully aided and abetted a violation of any provision (including rules and regulations) of the federal securities laws or the Commodity Exchange Act.

In an amendment parallel to Subsections 201(a)(7) and 204(b)(8) of the Act, adding Subparagraph 15(b)(4)(G) of the Exchange Act and Subsection 203(e)(7) of the Advisers Act, Section 9(b) is amended to add a new paragraph (4) that will authorize the Commission to restrict the activities of any person that has been found by a foreign authority to have (1) made any false or misleading statement in an application or report filed with a foreign securities authority or in a proceeding before the foreign securities authority, or (2) violated or aided and abetted the violation of foreign securities or commodities statutes. Paragraph (4) will, therefore, parallel the provisions of paragraph (1), (2) and (3) of Section 9(b), and extend the statute to equivalent foreign violations.

Section 9(b) also is amended to add two new subsections, 9(b)(5) and 9(b)(6), that will allow the Commission by order to prohibit a person from serving in any of the designated capacities if the person has been convicted by a foreign court of any of the offenses designated in Subsection 9(a)(1) or has been enjoined by a foreign court in a manner set forth in Section 9(a)(2). Subsections 9(a)(1) and (a)(2) automatically disqualify anyone who within the past 10 years has been convicted of any felony or misdemeanor involving, or is subject to a permanent or temporary injunction relating to, acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or in connection with the purchase or sale of any security. Although a conviction or injunction under Subsections 9(a)(1) or 9(a)(2) results in an automatic statutory disqualification, a substantially equivalent foreign conviction or injunction would not. However, a substantially equivalent foreign finding will provide a basis for a Commission order prohibiting the individual's association with a registered investment company in any of the capacities designated in the statute. The automatic disqualification provisions of Section 9(a), coupled with the Commission's exemptive authority under Section 9(c) to avoid any inequitable results, are indispensable means of safeguarding the integrity of registered investment companies. The amended Section 9(b) does not automatically bar a person solely on the basis of a foreign finding of a violation of foreign law without any prior notice or opportunity for hearing by a U.S. court or administrative agency. Instead, amended Section 9(b) provides that the Commission may impose a bar on a case-by-case basis of it determines that the foreign finding justifies such a sanction. The amendment does not create competitive disparities because, just as Section 9(a) applies equally to U.S. and foreign persons that have been convicted or enjoined in a manner specified in the statute, Section 9(b), as amended, grants the Commission authority to institute an administrative proceeding against either a U.S. or foreign person that has committed an equivalent foreign violation and has been sanctioned by a foreign authority.

Section 204(b). Section 204(b) of the Act amends Section 203(e) of the Advisers Act. Section 203(e) authorizes the Commission to censure, place limitations on the activities of, suspend for up to twelve months, or revoke the registration of an investment adviser where the adviser or an associated person of the adviser has committed, or has been sanctioned for, certain specified violations. Section 204(b) of the Act amends Sections 203(e) to include, among the factors that the Commission may consider, violations of foreign law that are substantially equivalent to a violation currently set forth in the statute.

Subsection 203(e)(2) of the Advisers Act authorizes the Commission to consider convictions within the past ten years of certain felonies and misdemeanors. Subsection 204(b)(1) of the Act amends this section to include convictions by a foreign court of competent jurisdiction of crimes substantially equivalent to a felony or misdemeanor. The Act thus clarifies the Commission's authority to consider foreign criminal findings that the foreign jurisdiction may not classify as a "felony" or "misdemeanor".

Subparagraph 203(e)(2)(A) of the Act lists offenses involving the purchase or sale of any security, the taking of a false oath, the

making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense as within the class of the felonies and misdemeanors that authorize the Commission to discipline investment advisers. Subsection 204(b)(2) of the Act amends Subparagraph 203(e)(2)(A) by including within this list any substantially equivalent activity, however denominated by the laws of a foreign government. The Act therefore clarifies the Commission's authority to consider such offenses even if the relevant foreign government does not use precisely the same terminology in describing the crime as U.S. state or federal law.

Subparagraph 203(e)(2)(B) of the Advisers Act authorizes the Commission to consider offenses arising out of the conduct of various securities-related businesses. Included is any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, or entity or person required to be registered under the Commodity Exchange Act. Subsection 204(b)(3) of the Act amends Subparagraph 203(e)(2)(B) to include offenses arising out of the conduct of any foreign person performing a function substantially equivalent to any of the above. The Act therefore clarifies the Commission's authority to consider these types of offenses regardless of the terminology used to describe the activity, which may vary among different countries.

Subparagraph 203(e)(2)(C) includes larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, and misappropriation of funds or securities within the list of offenses that may trigger Commission sanctions. Subsection 204(b)(4) of the Act adds any substantially equivalent offense, however denominated by the laws of a foreign government. Subsection (b)(4) of the Act clarifies Commission authority on this point in the same way and for the same reasons as Subsection (b)(2).

Subparagraph 203(e)(2)(D) includes violations of Sections 152, 1341, 1342, or 1343 or Chapter 25 or 47 of Title 18 of the U.S. Code within the list of offenses that the Commission may consider. These provisions concern concealment of assets, false oaths and claims, and bribery in connection with bankruptcy, mail fraud; wire fraud; counterfeiting and forgery; and fraud and false statements, respectively. Subsection 204(b)(5) of the Act amends Subparagraph 203(e)(2)(D) to include a violation of a substantially equivalent foreign statute. Subsection (b)(5) of the Act clarifies Commission authority on this point in the same manner and for the same reasons as Subsection (b)(2).

Section 203(e)(3) of the Advisers Act authorizes the Commission to impose sanctions where an investment adviser or associated person has been enjoined from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank or insurance company or entity or person required to be registered under the Commodity Exchange Act, or from engaging in any practice in connection with any of these activities or in connection with the purchase or sale of any security. Subsections 204(b)(3) and 204(b)(6) of the Act amend Subsection 203(e)(3) to include injunctions issued by any foreign court of competent jurisdiction that concern substantially equivalent activities.

Subsection 204(b)(7) of the Act is a technical amendment to Subsection 203(e)(5) of the Advisers Act. Section 203(e)(5) is amended to include violations of the Commodity Exchange Act. This technical amendment conforms Subsection 203(e)(5) with Subsection 203(e)(4) of the Advisers Act and Subparagraphs 15(b)(4)(D) and 15(b)(4)(E) of the Exchange Act.

Subsection 204(b)(8) of the Act adds new Subsection 203(e)(7) to the Advisers Act. This new subsection empowers the Commission to base sanctions on findings by a foreign financial regulatory authority of (1) false or misleading statements in registration or reporting materials filed with a foreign securities authority, (2) violations of statutory provisions concerning securities or commodities transactions, or (3) aiding, abetting, or otherwise causing another persons' violation of such foreign securities or commodities provision, or failing to supervise a person who has committed such a violation. Subsection (e)(7) substantially parallels the provisions of existing Subsection 203(e)(1), (4) and (5) concerning such findings by the Commission or other securities and commodities regulatory authorities. This section of the Act parallels Sections 201(a)(7) and 204(a) of the Act, which add Subsection 15(b)(4)(7) of the Exchange Act and Section 9(b)(4) of the 1940 Act.

Section 204(c). Section 204(c) of the Act amends Section 203(f) of the Advisers Act, which authorizes the Commission to impose sanctions upon persons associated or seeking to become associated with an investment adviser if the person has committed or omitted any act or omission set forth in Subsections 203(e)(1), (4) or (5) or has been convicted or enjoined as set forth in Subsections 203(e)(2) or 203(e)(3). Section 203(f) is amended to include a reference to new Subsection 203(e)(7), thus authorizing the Commission to consider such findings when imposing sanctions upon persons who are, or seek to become, associated with an investment adviser.

Section 205. Section 205 amends Section 2(a) of the 1940 Act and Section 202(a) of the Advisers Act to include definitions of "foreign securities authority" and "foreign financial regulatory authority". A "foreign securities authority" is defined as "any foreign govenment, or any government body or regulatory organization empowered by a foreign government to administer or enforce its laws relating to securities." A "foreign financial regulatory authority" includes a "foreign securities authority" or organization that is essentially equivalent to a self-regulatory organization. These definitions are identical to the definitions added to the Exchange Act by Subsection 101(a) and Section 202 of the Act.

Major Points of the International Enforcement Cooperation Act of 1988

Expansion of SEC investigative powers:

Would provide the SEC with the authority to conduct, in the United States, an investigation of securities fraud at the request of a foreign country where that foreign country agrees to provide similar investigative assistance to the SEC. Under existing law, the SEC cannot compel the production of documents and testimony unless it appears that a violation of the U.S. securities laws may have occurred.

If the SEC has the authority to assist foreign authorities in enforcing their securities laws, then foreign authorities will have a strong inducement to assist the SEC on a reciprocal basis and to enter into mutual assistance arrangements. The legislation requires that before the SEC grants assistance to a foreign country, the foreign authority must agree to provide reciprocal assistance to the SEC.

In January of this year, the SEC entered into a memorandum of understanding (MOU) with securities officials in Ontario, Quebec and British Columbia that provides for such investigative assistance. This bill will enable the SEC to carry out that commitment with the Canadian provinces. The bill will also likely enable the SEC to enter into similar arrangements with other foreign countries.

Ability to SEC to Protect Documents received from Foreign Authorities

The bill would provide foreign authorities with confidence that unless a law enforcement proceeding were initiated, or information were provided to Congress, that the information would be kept confidential consistent with its domestic standards.

SEC rulemaking authority for sharing evidence with other securities officials, both foreign and domestic:

The bill would make explicit the SEC's authority to share evidence with other securities authorities.

SEC authority to impose employment restrictions on basis of foreign law violations:

The bill would provide the SEC with the authority to restrict the employment or revoke the registration of a securities professional who is found by a foreign court or foreign securities authority to have engaged in illegal or improper conduct.

Memorandum in Support of the International Securities Enforcement Cooperation Act of 1988

I. Introduction

In recent years, financial markets have experienced rapid internationalization. Cross-border trading, resulting in large part from technological advances and the removal of restrictions on foreign participation in many securities markets, has increased several-fold. This development, while expanding opportunities for legitimate investment activities, has, at the same time, also expanded opportunities for persons to engage in fraud. A growing number of Commission investigations involve suspicious conduct taking place in foreign countries with an impact on the U.S. securities markets, the world's largest markets.

As a result, there is a substantial and growing need for cooperation between U.S. and foreign securities authorities. In many cases, documents and witnesses, needed in a Commission investigation of violations of the U.S. securities laws, are located abroad. Until recently, the Commission generally has conducted its investigations without the benefits of mechanisms to obtain the investigative assistance or cooperation of foreign authorities. The Commission has engaged in unilateral evidence-gathering efforts utilizing subpoenas and, where necessary, court orders requiring production of evidence. Such efforts, while successful, have been time-consuming and expensive. In addition, in some cases the Commission's investigative efforts have been viewed by foreign countries as infringing upon their sovereignty. Moreover, these unilateral efforts have provided no long-term solutions to international enforcement problems.

During the past few years, the Commission has attempted to address these problems through bilateral assistance agreements, known as memoranda of understanding (MOUs). MOUs have been signed with Switzerland, the United Kingdom, Japan and, more recently, three Canadian provinces. These agreements, which enable the Commission to obtain documents or other evidence located abroad through the cooperation of foreign authorities, are attractive for several reasons. The MOUs provide detailed procedures for obtaining evidence; establish guidelines for handling the Commission's requests so that information can be gathered in a reasonably efficient fashion; and avoid creating friction between the U.S. and foreign securities authorities. In other words, the MOUs substitute cooperation for confrontation and, in so doing, significantly facilitate investigations of international securities fraud.

Until recently, however, the MOUs did not provide the Commission with the ability to obtain, on a reciprocal basis, the same information abroad that it can obtain in the U.S. when a U.S. securities law has been violated. The reason for this limitation is that most foreign authorities lack the statutory authority to investigate allegedly illegal conduct at the Commission's request unless the conduct under investigation also violates the laws of the foreign country. The commission operates under the same limitation. It cannot assist a foreign authority by compelling the production of documents and testimony unless it appears that a violation of the U.S. securities laws may have occurred.

This limitation on international cooperation was brought to the forefront by the MOU entered into between the Commission and the Ontario, Quebec and British Columbia securities commissions on January 7, 1988. The parties to that agreement have undertaken to assist one another by investigating—i.e., compelling testimony and the production of evidence—a law violation at the request of authorities in the other country even without an indication that a violation occurred of the laws of the investigating country. However, as discussed above, the Commission and the Canadian authorities, except for the Quebec securities commission, lack the statutory authority to conduct such an investigation. As a means of addressing this problem, the MOU commits the parties to take "all reasonable steps to obtain the necessary authorization" to conduct such an investigation.

Pursuant to its commitment under the Canadian MOU, and in order to enhance its enforcement capabilities, the Commission seeks the enactment of the attached bill, titled the "International Securities Enforcement Cooperation Act of 1988." Title I, Section 101, of the proposed legislation would amend Section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act") to provide that the Commission "may conduct such investigation as it deems necessary to collect information and evidence pertinent to a request for assistance" by a foreign authority. The Commission believes that foreign countries will be more likely to enter into bilateral assistance agreements with the Commission, and that other MOUs in effect and under negotiation may be expanded, if the Commission has the authority to provide investigative assistance. As to the authority of foreign countries to conduct investigations at the Commission's request, the proposed legislation requires that the foreign authority agree to provide the Commission with investigative assistance before the Commission can grant reciprocal assistance.

The legislation also addresses three other international enforcement concerns. First, Section 102 of the legislation would amend Section 24 of the Exchange Act to enable the Commission to maintain the confidentiality of certain foreign evidence. This amendment would, like Section 101 of the bill, promote agreements on bilateral assistance between the Commission and foreign authorities. There have been instances in which MOU negotiations Commission to maintain the confidentiality of certain foreign evidence. This amendment would, like Section 101 of the bill, promote agreements on bilateral assistance between the Commission and foreign authorities. There have been instances in which MOU negotiations have been frustrated by the Commission's inability to provide assurances that documents and testimony transmitted to the Commission by the foreign authorities will be kept confidential. The Commission cannot provide assurances of confidentiality because of its disclosure obligations under the Freedom of Information Act ("FOIA"). In order to facilitate the cooperation of foreign authorities in providing the Commission with investigative assistance, the Commission believes that it would be appropriate to exempt documents furnished to the Commission from disclosure if the foreign authorities represent that the disclosure of such documents would violate confidentiality requirements of their country's laws. Section 102(b) of the legislation would so provide.

Second, Section 102(b) of the bill would make explicit the Commission's rulemaking authority to provide documents and other information to foreign authorities under the Canadian and other bilateral assistance agreements, as well as to domestic authorities. Pursuant to Rule 30-4(a)(7), 17 C.F.R. 200.30-4(a)(7), the Commission currently grants access to Commission investigative files to certain securities enforcement entities, including domestic and foreign securities authorities and self-regulatory organizations. However, Section 24(b) of the Exchange Act, as well as provisions of the Investment Advisers Act of 1940 ("Investment Advisers Act") and the Investment Company Act of 1940 ("Investment Company Act"), arguably preclude the disclosure of certain nonpublic documents. In view of the significance of this issue to the Commission's efforts to cooperate both with foreign and domestic securities officials, the Commission believes that it would be appropriate to enact legislation making clear that the Commission, by rule, may provide for the disclosure of nonpublic documents. Section 102(b) of the accompanying legislation would accomplish this goal.

Finally, Title II of the bill would amend the Exchange Act, the Investment Advisers Act, and the Investment Company Act to authorize the Commission to censure, revoke the registration of or impose employment restrictions upon securities professionals based upon the findings of a foreign court or foreign securities authority. The Commission already has such authority as to illegal or improper activity in this country pursuant to Section 15(b)(4) of the Exchange Act, Section 203(e) of the Investment Advisers Act, and Section 9(a) and (b) of the Investment Company Act. Certain subsections of these provisions also have been used to support the imposition of limitations on activities of securities professionals based upon the findings of a foreign court as to illegal activity abroad. In conjunction with the amendments contained in Title I, the Commission believes that it would be appropriate to make explicit and add to the Commission's existing authority. The Commission believes that it should have the authority to suspend or bar securities professionals who have made false filings with foreign authorities; who have been convicted of certain crimes (both securities and non-securities related) by foreign courts; who have been enjoined by a foreign court from committing securities law violations; who have violated foreign securities laws; or who have aided and abetted such violations. The Commission believes that this authority is a necessary supplement to its authority to place limitations on securities professionals based on violations of U.S. laws. Moreover, these legislative changes reflect the Commission's expectation that, at least in part as a result of the enforcement assistance that the Commission will provide to foreign authorities pursuant to Section 101 of this bill, securities professionals will be subject to more aggressive enforcement efforts by such foreign authorities. It would be ironic if securities professionals who are found, with the Commission's assistance under Section 101, to have violated foreign securities laws, were allowed unfettered operations in the U.S. securities markets, even though limitations would have been placed on them for the same violations in the U.S. The provisions of Title II would protect against such a result.

II. COMMISSION'S PROPOSED LEGISLATION

A. Legislation authorizing Commission investigations at behest of foreign securities authorities.

1. The need for legislation.

a. Overview of difficulties in international enforcement

Increasing internationalization of the capital markets has made more difficult the task of investigating alleged securities law violations.[1] In more and more cases, Commission investigators and litigators must deal with witnesses who reside in a foreign country and with books, trading records and other evidence that is located abroad.[2]

The U.S. securities laws provide generally that the Commission's investigative subpoena power extends only to the production of documentary and testimonial evidence "from any place in the United States or any State."[3] If an individual or entity located in a foreign country refuses to cooperate voluntarily in the investigation, the Commission must seek the assistance of a foreign sovereign, or wait until the individual enters the United States, to develop the necessary evidence. Even where the Commission effectively serves a subpoena in the United States to compel a person located here, or a subsidiary of a foreign corporation located here, to provide documents located abroad,[4] subpoena enforcement actions and contempt proceedings in such cases are expensive and protracted. In addition, particularly when secrecy laws are at issue,[5] court enforcement of a subpoena engenders the hostility of the foreign country, which views such a proceeding as an infringement of its sovereignty.[6]

Once a lawsuit has commenced, the Commission has additional means of obtaining discovery. As to parties, a court may compel discovery, including testimony and the pro-

Footnotes at end of article.

duction of documents, pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 37. However, as with investigative subpoenas, the issuance of litigation subpoenas may create friction with foreign authorities. As to foreign nonparties, a court may issue letters rogatory to a foreign court pursuant to Fed. R. Civ. P. 28(b)(3). Where the country in which evidence is sought is a signatory to the Hague Evidence Convention,[7] the Commission may use letters of request, which are similar to letters rogatory.[8] Those procedures, however, can be extremely slow and expensive. In addition, restrictions on discovery techniques in certain countries—such as limitations on the right of counsel to directly examine witnesses—can render such procedures inadequate.[9]

b. Benefits of bilateral agreements

As a result of these difficulties, the Commission's enforcement efforts are greatly enhanced by bilateral agreements between the Commission and foreign countries and securities authorities. Such agreements, which bring the Commission and its equivalent foreign regulator into a cooperative relationship, provide powerful means for international securities enforcement.[10]

Bilateral agreements were reached with Switzerland[11] in 1982 and with both Japan and the United Kingdom in 1986. In addition, on January 7, 1988, the Commission signed an MOU with the Ontario, Quebec and British Columbia securities commissions. The Commission is currently seeking similar agreements with several other foreign authorities.

The Commission's existing statutory authority, however, does not permit full cooperation between the Commission and foreign authorities in international investigations. The British MOU exemplifies the limitations. Under that agreement, each country undertakes to provide the other with "any information" that it has "in its hands" or that it can by "best efforts" obtain. In some cases, the Commission has important information in its hands. In other cases, where there is evidence of a law violation in both this country and the foreign country, the Commission may investigate and then exchange information with the foreign country. But where there is no independent basis for investigating a violation of U.S. law, the Commission lacks authority to compel testimony or production of documents on behalf of a foreign securities authority.[12] For example, if a U.S. bank holds documents evidencing the proceeds of a securities law violation which took place entirely abroad, and as to which the Commission therefore lacks jurisdiction, the Commission has no authority to compel production of the documents. The Commission's "best efforts," in orther words, may in some cases be ineffective.

Foreign authorities confront many of the same obstacles to evidence gathering in this country that the Commission encounters in foreign countries. Absent voluntary cooperation of witnesses, U.S. law does not make it feasible for foreign securities authorities to obtain evidence in this country on their own. Absent assistance by the Commission or other government agencies, the only procedure now available to a foreign government seeking to investigate securities fraud in this country is letters rogatory under 28 U.S.C. 1782. That statute allows a federal district court, at the request of a "foreign or international tribunal," to issue letters rogatory to persons within its district to give testimony or produce evidence. The term "tribunal," however, has been interpreted as meaning a judicial or quasi-judicial body.[13] As a result, the letters rogatory procedure may not be available to foreign regulatory authorities in the investigative stage. In any event, the letters rogatory application must be reviewed by the U.S. court in an open proceeding. The public nature of the process and the frequent delays in U.S. courts make this procedure an impractical means for foreign authorities to investigate many securities law violations.

c. The Canadian MOU

The Commission negotiated the Canadian MOU to address the problems described above. The Canadian MOU provides broader coverage and assistance then the previously negotiated MOUs. In particular, the signatories to the Canadian MOU agreed to take "all reasonable steps" to obtain statutory authority that would permit investigations of securities law violations at the request of a foreign authority. The Quebec securities commission is the only signatory with such investigative authority at the present time.[14]

In letters exchanged in conjunction with the signing of the Canadian MOU, the remaining three parties to the MOU agreed to seek such statutory authority by January 7, 1989.

The proposed legislation is intended to fulfill the Commission's commitment under the Canadian MOU. In addition, the Commission is negotiating MOUs with other countries which are similar to the Canadian MOU. These cooperative approaches to evidence-gathering will be less expensive and time consuming than the alternatives described above, such as letters rogatory.[15] In addition, at least in the short-term, such arrangements are likely to benefit the Commission more than foreign countries, which in many cases do not have the statutory authority to pursue as broad a range of securities law violations as does the Commission.[16]

2. The proposed legislation.

The legislation would amend Section 21(a) of the Exchange Act to provide: "On request from a foreign securities authority, the Commission may, in its discretion, provide assistance in accordance with this paragraph if the requesting authority: (a) states that it is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that it administers or enforces; and (b) agrees to provide similar assistance to the Commission in securities matters. The Commission may conduct such investigation as it deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether compliance with the request would prejudice the public interest of the United States."

This legislation would expand the Commission's authority under Section 21 of the Exchange Act to allow a Commission investigation for the purpose of assisting a foreign authority determine whether a violation of the laws it administers has occurred, is occurring, or is about to occur. The Commission's discretion to open the investigation to assist a foreign authority would be governed by the same standards as a domestic violation. As a result, the proposal brings into play the full range of investigative procedures and remedies at the Commission's disposal, including the issuance and enforcement of subpoenas. By utilizing the investigative framework which already is in place, the proposal provides a vehicle with which the Commission and the legal community is familiar for assisting foreign authorities.

The legislation would give the Commission the discretion to issue a formal order of private investigation to assist in gathering information regarding alleged violations of foreign laws relating to securities matters. It is contemplated that a foreign authority seeking the Commission's assistance would submit a request detailing the facts which constitute a potential violation of its laws.[17] The Commission would review this request and make a determination whether to issue a formal order. If a formal order were issued, the staff members appointed as officers of the Commission for purposes of the investigation would conduct an investigation in the U.S., gathering the requested information as they would pursuant to any formal order. Thus, the Commission staff would reserve control of the investigation in the U.S.

Because the proposed legislation relies upon established formal order procedures, it provides witnesses with all of the protection and remedies afforded to witnesses in Commission proceedings. Accordingly, witnesses could obtain access to a formal order identifying the basis and subject matter of an investigation. Further, they would be able to resist enforcement of a burdensome subpoena. In this regard, any challenge to a Commission subpoena would have to be reviewed by the Commission as part of the authorization process for a subpoena enforcement action. The Commission anticipates that any person resisting the subpoena would make his reasons known at the time he initially resists the subpoena. This information would be available to the Commission for its consideration before a decision was made to institute a subpoena enforcement action. Accordingly, the Commission would have an opportunity to review the matter, and the facts as argued by the subject of the subpoena, before seeking a court determination. The Commission believes, that by providing a witness with the same rights and protections provided to witnesses in Commission investigations, the proposed legislation resolves any constitutional due process and Fourth Amendment concerns which could be raised.[18]

The legislation restricts assistance requests to "foreign securities authorities." That term is defined in the amendments as "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters." This definition recognizes that countries have different approaches to securities law enforcement. In some countries—the United Kingdom, for example—jurisdiction over securities law enforcement has been assigned by statute to a government authority. In still other countries, a private agency is authorized to act as the primary administrator or enforcer for securities matters. The Commission intends that the definition of "foreign securities authority" encompass:

(a) foreign independent regulatory agencies similar to the Commission, such as the Commission des Operations de Bourse in France and the Canadian provincial securities commissions, as well as foreign Executive agencies, such as the British Secretary of State for the Department of Trade and

Industry, which hold express statutory authority to enforce securities laws;

(b) general policing entities, such as the Swiss Federal Department of Justice and Police, which enforce commercial, corporation and financial laws or other generalized fraud statutes; and

(c) self-regulatory organizations ("SRO"), such as the U.K. Securities and Investment Board (as of April 1988), to the extent the SRO is not merely a membership organization but also "administers" or "enforces" securities laws.[19]

The proposed amendment provides the Commission with discretion to grant or deny assistance. As a result, the Commission would not be in the position of providing assistance to an agency or regulatory organization of uncertain legal authority, or in response to an unreasonable or ill-founded request.

The amendment requires that before the Commission may provide assistance, the requesting authority must agree to provide the Commission with similar investigative assistance. This amendment would thus provide a substantial incentive for foreign securities authorities to enter into mutual assistance arrangements with the Commission.

B. Legislation authorizing the Commission to withhold from disclosure documents furnished to the Commission by foreign securities officials.

1. The need for legislation.

In entering into MOUs with the Commission, authorities in foreign countries have committed themselves to obtaining and providing the Commission with certain documents, some of which otherwise would be kept confidential. While these authorities have determined that it is appropriate to permit public use of documents, which otherwise must be kept confidential, when the Commission prosecutes securities law violators, they have expressed concern about the disclosure of such documents when the Commission decides not to prosecute a particular matter.

Under the FOIA, the Commission cannot assure foreign authorities that the confidentiality of any documents furnished to the Commission will be maintained. The Commission's disclosure obligations under the FOIA are the same for records obtained from foreign securities authorities as they are for records obtained from other sources, i.e., the documents must be disclosed under the FOIA unless they fall within a specified FOIA exemption. Because of these FOIA obligations, foreign securities authorities have expressed concerns about providing the Commission with information relevant to ongoing investigations. They have also stated that their own domestic laws preclude them from entering into agreements with the Commission unless the Commission is able to fulfill the confidentiality requirements of the foreign country's laws.

In seeking enactment of Section 102(d) of the attached bill which would establish an exemption from disclosure under the FOIA, the Commission does not intend to undermine the policies underlying the FOIA. However, the Commission believes that principles of comity make it appropriate to exempt from disclosure confidential documents obtained from a foreign government if those documents could not be disclosed under the laws of that foreign government. Moreover, adoption of such an amendment will almost certainly allow the Commission to obtain otherwise unobtainable confidential documents from foreign countries for law enforcement purposes. These considerations warrant enactment of the FOIA exemption.

2. The proposed legislation.

The legislative proposal would amend Section 24 of the Exchange Act by adding the following new provisions:

(d) Notwithstanding the provisions of the Freedom of Information Act, 5 U.S.C. 551 et seq., or of any other law, the Commission shall not be compelled to disclose records obtained from a foreign securities authority if the foreign securities authority has in good faith represented to the Commission that public disclosure of such records by such authority would be contrary to the laws of the foreign country from which they were obtained.

(e) Nothing in this Section shall prevent the Commission from complying with a request for information from the Congress or from complying with an order of a court of the United States in an action commenced by the United States or the commission.

The proposed Section 24(d) would supersede FOIA by authorizing the Commission to withhold from disclosure documents obtained from a foreign securities authority if the foreign authority has in "good faith" represented to the Commission that public disclosure of such records would be contrary to the laws of the foreign country. The term "foreign securities authority" would include, as discussed above (supra, p. 13), government agencies and self-regulatory organizations which "administer" or "enforce" the securities laws. The amendment would not restrict the Commission's use of the information and documents obtained from a foreign authority in its investigations or for enforcement purposes. Nor would it limit the ability of the Congress to obtain information in the Commission's possession or preclude defendants in actions commenced by the United States or the Commission from seeking, through discovery or otherwise, such documents.[20]

The amendment would add a new Section 24(e) to make clear that the amendment would not prevent the Commission from complying with a request for information from the Congress or from complying with an order of a court of the United States in an action commenced by the United States or the Commission. This amendment would render unnecessary the existing last sentence of Section 24(b) of the Exchange Act, which provides that "nothing in this subsection shall authorize the Commission to withhold information from the Congress." That sentence, therefore, would be deleted.

By providing authority for the Commission to withhold from disclosure certain records obtained from foreign securities authorities "in response to a request pursuant to the Freedom of Information Act," the amendment clearly would supersede the disclosure obligations imposed by the FOIA, and hence would not require that the Commission rely on a FOIA exemption in order to withhold from disclosure confidential documents.[21] In addition, the determination whether foreign law prohibits the disclosure would be made by the foreign authorities, not by the Commission. That decision must, however, be made in good faith.[22]

C. Legislation granting the Commission rulemaking authority to permit access to its files by persons, both domestic and foreign, engaged in securities law enforcement and oversight.

1. The need for legislation.

The Commission's Rules of Practice[23] authorize the Director of the Division of Enforcement to provide access to nonpublic materials in the Commission's investigative files to domestic and foreign governmental authorities, self-regulatory organizations, and other specified persons. In addition, Rule 2 of the Commission's Rules Relating to Investigations authorizes designated members of the Commission staff to "engage in discussions" concerning the nonpublic materials with the persons specified in Rule 30-4(a)(7).[24] These access rules have frequently provided the essential basis for prosecutions of securities law violations by other enforcement agencies and SROs.

The Commission's access rules are longstanding. However, Section 24(b) of the Exchange Act, 15 U.S.C. 78x(b), enacted in 1975, makes it unlawful "for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under [the FOIA], or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment of information." Section 24(b) was intended to make all requests for confidential treatment of information subject to the FOIA rules.[25] There is nothing in the legislative history suggesting that Congress intended to undermine the Commission's access program. Nevertheless, the literal language of Section 24(b) seems to do precisely that: documents that are determined under the FOIA to be confidential cannot be disclosed.

In most situations, the Commission receives an access request before the staff makes a confidential treatment determination, and Section 24(b) would not, therefore, be at issue. On occasion, however, Section 24(b) can pose an obstacle to compliance with an access request.

Additional problems with the Commission's access program may arise from other statutory provisions. Section 210(b) of the Investment Advisers Act bars the staff from making public information relating to a Commission investigation if it was obtained pursuant to that Act, unless the Commission expressly authorizes such disclosures (with an exception for public hearings and disclosure to Congress). Section 45(a) of the Investment Company Act imposes a bar on the disclosure of non-public documents obtained by the Commission pursuant to that Act, except insofar as disclosure is made to federal or state government officials.

To remove these apparent obstacles to the Commission's authority to grant access to its files to domestic and foreign authorities, the Commission proposes that the Exchange Act be amended to provide the Commission with explicit authority in this area.

2. The proposed legislation.

The proposed legislation would amend Section 24 of the Exchange Act by adding subsection (c) as follows:

(c) Notwithstanding any other provision of law, the Commission may in its discretion and upon a showing that such information is needed, provide all "records" (as defined in subsection (a) above) and other information in its possession to such persons, both domestic and foreign, as the Commission by rule deems appropriate;

Provided, That the person receiving such records or information provides such assurances of confidentiality as the Commission deems appropriate; and

Provided further, That nothing in this section shall alter the Commission's responsibilities under the Right to Financial Privacy Act, 12 U.S.C. 3401 et seq., as limited by Section 21(h) of the Securities Exchange Act, 15 U.S.C. 78u(h), with respect to transfers of records covered by such statutes.

The Commission is proposing the foregoing amendment, which grants the Commission rulemaking authority, rather than an amendment which would list the specific persons to whom access may be given. As a result, the Commission will have flexibility in adjusting its access rules in the future. In addition, by specifying that the Commission may permit access by foreign persons, the Commission's authority as to this matter will be made explicit.[26] The provision as to confidentiality of records is intended to ensure that the Commission will not provide records to persons who will make the records public for purposes other than those stated in an access request.[27]

The legislation would not alter the certification and notice requirements imposed by the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. 3401 et seq. Under Section 1112(a) of the RFPA, the Commission may not transfer to other federal agencies financial records that were obtained by the Commission subject to the RFPA procedures unless it certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. In addition, the Commission must send the customer a copy of such certification and a notice which both describes the nature of the law enforcement inquiry and informs the customer of potential legal rights under relevant privacy statutes. These requirements do not apply to transfers of information to non-federal agencies, foreign authorities, or self-regulatory organizations.[28]

D. Legislation authorizing the Commission to impose sanctions on securities professionals for violations of foreign laws.

1. The need for legislation.

a. Overview

One likely result of efforts by foreign securities authorities to strengthen their securities law enforcement will be an increase in the number of enforcement or disciplinary proceedings brought against securities professionals, such as brokers, dealers, and investment advisers. Indeed, if Section 101 of the proposed legislation is enacted, such actions may result at least in part from the assistance provided to foreign authorities by the Commission pursuant to that section. The Commission, however, currently does not have explicit authority to impose administrative sanctions against such professionals based upon foreign findings of their illegal or improper foreign activities (although, as discussed below, the Commission has some authority in this area). The proposed legislation provides that the Commission may impose sanctions on securities professionals who have been found to have engaged in misconduct abroad when, had the same misconduct taken place in the United States, the professional would have been subject to a Commission disciplinary proceeding. It is important to note that the Commission would have discretion to bring an administrative proceeding based on foreign misconduct, just as it has discretion to bring such actions based on domestic misconduct. Title II of the bill therefore would amend Sections 15(b)(4) and 3(a)(39) of the Exchange Act; Section 9(b) of the Investment Company Act; and Section 203(e) of the Investment Advisers Act to provide the Commission with this express authority and to add to the Commission's existing authority.

b. Specific concerns

U.S broker-dealer, investment advisers, and investment companies have increased significantly their activities in foreign markets.[29] The activities of foreign professionals in the U.S. markets also are likely to increase.[30] As a result, the Commission is likely to confront a growing number of securities professionals who have been disciplined abroad for illegal or improper activities working or seeking to work in this country.

The Commission currently has substantial authority to curtail the securities activities of certain convicted criminals and other wrongdoers for illegal or improper conduct in *this* country. Under Section 15(b)(4) and (b)(6) of the Exchange Act, the Commission may censure, limit the activities, functions, or operations of, suspend for up to twelve months, or revoke the registration of any broker or dealer, or bar from association with any broker or dealer, any person: found to have violated the federal securities laws, rules, or regulations thereunder; convicted of a "felony or misdemeanor" within the preceding ten years involving specified crimes; who willfully has filed a false or misleading statement in any registration statement or report filed with the Commission; or who has willfully aided and abetted a violation of any portion of the federal securities or commodities laws. Such a person also is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act.[31] Section 203 (e) and (f) of the Investment Advisers Act provides the Commission with disciplinary authority as to investment advisers and persons associated with registered investment advisers, similar to that in Section 15(b)(4) and (6) of the Exchange Act.[32]

In addition, Section 9(a) of the Investment Company Act generally prohibits a person convicted of a securities-related crime or subject to a securities-related injunction from serving as an employee, officer, director, member of an advisory board, investment adviser, or depositor of a registered investment company, or principal underwriter for any registered open-end company, unit investment trust, or face-amount certificate company. The automatic statutory disqualification in Section 9(a) is supplemented by the Commission's authority under Section 9(b). Under Section 9(b), the Commission may prohibit a person from serving in any of the capacities cited in Section 9(a) or as an affiliated person of a registered investment company's investment adviser, depositor, or principal underwriter if the person willfully has caused a false or misleading statement to be made in any registration statement or report filed with the Commission or if the person has willfully violated or aided and abetted a violation of any provision of the federal securities or commodities laws.

Although the foregoing provisions do not mention the Commission's authority to impose sanctions based on foreign misconduct, certain of the provisions can be so applied. In particular, Sections 15(b)(3)(B) of the Exchange Act, 203(e)(2) of the Investment Advisers Act, and 9(a)(1) of the Investment Company Act refer to a "felony or misdemeanor" conviction for specified crimes; neither the statutes nor thir legislative histories specify that the crime or conviction must take place in the United States.[33] Thus, pursuant to Section 15(b)(4)(B), the Commission revoked the U.S. registration of a Canadian broker-dealer who was convicted of crimes in Canada involving the purchase or sale of securities.[34] Likewise, under Sections 15(b)(4)(C) of the Exchange Act and 203(e)(3) of the Investment Advisers Act, the Commisison may impose sanctions based upon a securities-related injunction entered by a "court of competent jurisdiction," and under Section 9(a)(2) of the Investment Company Act, such an enjoined person's association with a registered investment company is limited. These statutes are not explicitly limited to injunctions entered by U.S. courts. See L. Loss, supra at 1305 (stating that a "court of competent jurisdiction" as set forth in Section 15(b)(4)(C) may include a foreign court).

As to other provisions, however, such authority needs to be addressed. First, the Commission's authority to impose sanctions on a professional[35] and to restrict association with a registered investment company[35] for a misstatement in an application for registration or report filed with the Commission does not extend to misstatements made to foreign regulatory authorities. Second, the Commission's authority to impose sanctions on the professional[36] to restrict association with a registered investment company[37] for willful violation of the U.S. securities and commodities laws does not extend to violations of foreign securities laws. Finally, the Commission's authority to impose sanctions on professionals for aiding and abetting a violation or failing reasonably to supervise a person subject to the professional's control in violation of the U.S. securities laws[38] and to restrict association with a registered investment company of personnel who are found to have aided and abetted such violations[39] does not extend to activities that violate foreign securities and commodities laws. The legislation would provide the Commission with authority to act in each of these circumstances.

In addition, as to the provisions under which, as discussed above, the Commission has authority to impose sanctions, the legislation would make such authority explicit and would preclude certain challenges which might be possible under the existing statutes. In particular, Section 15(b)(4)(B) of the Exchange Act, Section 203(e)(2) of the Investment Advisers Act, and Section 9(a)(1) of the Investment Company Act refer to convictions for a "felony or misdemeanor" as the basis for a Commission sanction. A securities professional who was convicted in a country that does not define crimes as "felonies" or "misdemeanors" might successfully challenge the Commission's authority under these sections. A Commission administrative sanction also could be challenged when the foreign offense for which the securities professional was convinced is not one of the exact offenses specifically covered by the statutory provisions. As discussed below, the proposed legislation would undercut such defenses by providing for Commission sanctions based upon foreign convictions for crimes "substantially equivalent" to those listed in the statute. The legislation also would foreclose the potential argument that the statutory provisions[40] that allow the Commission to impose sanctions on professionals who have been enjoined from acting in specific capacities, such as underwriters or investment advisers, do not apply to persons whose profession is not so defined in a foreign country.

The proposed amendments would resolve the potential difficulties posed by differences in employment terms by permitting sanctions based upon an injunction entered against a professional who performs a "substantially equivalent" function to the activities currently listed in the statute.

The proposed legislation would also create a "statutory disqualification," as defined in section 3(a)(39) of the Exchange Act, when a foreign securities authority or foreign court makes findings of illegal or improper conduct.

The Commission's action against a securities professional would not be automatic. The statutory procedure for imposing sanctions for foreign misconduct would be the same as that currently in place for imposing sanctions for domestic misconduct. The Commission would provide the securities professional with notice and an opportunity for a hearing prior to taking such action. The securities professional would thus have an opportunity to present evidence on his own behalf, in order to demonstrate that the imposition of sanctions would not be in the public interest. In addition, if the professional makes a persuasive due process or jurisdictional attack on the foreign adjudicative proceedings, the commission may be required to permit relitigation of the underlying offense. In such a case, the foreign finding of misconduct would provide the basis for a Commission administrative proceeding even though principles of collateral estoppel might not be available to the Commission.[41]

2. The proposed legislation.

Title II of the proposed legislation would add new subsections 15(b)(4)(G) to the Exchange Act, 203(e)(7) to the Investment Advisers Act, and 9(b)(4) to the Investment Company Act. These provisions would apply the proscriptions of Section 15(b)(4 (A), (D), and (E) of the Exchange Act, Section 203(e)(1), (4), and (5) of the Investment Advisers Act, and Section 9(b)(1)–(3) of the Investment Company Act to an international context. Thus, the Commission would be able to impose sanctions on the professional if he has been found by a "foreign financial regulatory authority"—a defined term in the Acts—to have made false or misleading statements in registration statements or reports filed with the authority; violated foreign statutory or regulatory provisions regarding securities or commodities transactions; or aided, abetted, or otherwise caused another person's violation of such foreign securities or commodities provisions or failed to supervise a person who has committed a violation of such provisions. The term "foreign financial regulatory authority" would be defined in new Sections 3(a)(51) of the Exchange Act, 202(a)(24) of the Investment Advisers Act, and 2(a)(50) of the Investment Company Act to include a "foreign securities authority" or organization that is essentially equivalent to a self-regulatory organization. The term "foreign securities authority," in turn, is defined in new Sections 3(a)(50) of the Exchange Act, 202(a)(23) of the Investment Advisers Act, and 2(a)(49) of the Investment Company Act as "any foreign government or any government body or regulatory organization empowered by a foreign government to administer or enforce its laws relating to securities."[42]

Subsections 15(b)(4)(G), 203(e)(7), and 9(b)(4) are substantially similar to the aforementioned subsections of 15(b)(4), 203(e), and 9(b). The most significant difference between the existing and the new provisions is that the legislation would not require that the foreign authorities find "willful" misconduct, *i.e.*, a "willful" false filing, a "willful' statutory violation, or "willful" secondary liability. The Commission recommends this approach because of a potential disparity in standards of willfulness in different countries and because some countries may not require a "willful" violation. The proposed language would provide the Commission with flexibility in deciding whether the facts of a particular case warrant imposition of sanctions.

In addition, Section 15(b)(4)(B) of the Exchange Act and Section 203(e)(2) of the Investment Advisers Act would be amended to grant the Commission explicit authority to consider convictions by a foreign court of competent jurisdiction of any crime enumerated in current Section 15(b)(4)(B) and Section 203(e)(2) or a "substantially equivalent" foreign crime; Section 15(b)(4)(C) of the Exchange Act and Section 203(e)(3) of the Investment Advisers Act would be amended to state explicitly that the Commission may consider injunctions imposed by a foreign court of competent jurisdiction in connection with any of the activities designated in the statute, or a "substantially equivalent" foreign activity. The Commission would have authority to restrict association with a registered investment company based on the same factors in new subsections 9(b)(5) and (6).

It should be noted that the Commission determined not to recommend an amendment to Section 9(a) of the Investment Company Act, which prohibits association in certain capacities with a registered investment company by persons who have been convicted of certain offenses or who have been subject to specified injunctions. Section 9(a) is a self-policing mechanism, the purpose of which "is to prevent persons with unsavory records from occupying these positions where they have so much power and where faithfulness to the fiduciary obligations is so important."[43] The automatic disqualification provisions of Section 9(a), coupled with the Commission's exemptive authority under Section 9(c) to avoid any inequitable results, are indispensable means of safeguarding the integrity of registered investment companies. However, due process concerns may be presented by legislation that would automatically bar a person solely on the basis of a foreign finding of a violation of foreign law, without any prior notice or opportunity for hearing by a U.S. court or administrative agency. These concerns are avoided if the Commission determines, on a case-by-case basis, whether the foreign finding justifies a bar, rather than relying exclusively on a foreign finding of a violation of foreign law. The amendment would not create any competitive disparities because, just as Section 9(a) applies equally to U.S. and foreign persons that have been convicted or enjoined in a manner specified in the statute, amended Section 9(b) would grant the Commission authority to institute an administrative proceeding against either a U.S. or foreign person that has committed an equivalent foreign violation and has been sanctioned by a foreign authority.

Finally, the Commission is proposing amendments to Section 3(a)(39). That section establishes the bases for imposing a "statutory disqualification" on a broker or dealer, thereby subjecting it to the possibility of disciplinary sanctions by the Commission or a self-regulatory organization as set forth in Section 15A(g)(2) of the Exchange Act and Rule 19h-1 thereunder. The proposed amendment would amend Section 3(a)(39) by creating a statutory disqualification for misconduct in foreign countries.

III. CONCLUSION

The proposed legislation would promote the negotiation of mutual assistance agreements which enhance the Commission's ability to obtain evidence for the investigation and prosecution of securities law violators operating in or through foreign countries. In addition, the legislation would provide the Commission with expanded authority to bring administrative proceedings against securities professionals based upon their illegal or improper activities in foreign countries. Finally, the legislation would clarify the statutory authority for the Commission's access rules. In view of the rapid internationalization of the securities markets, these are important and needed amendments.

FOOTNOTES

[1]See generally, Internationalization of the Securities Markets, Report of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce, dated July 27, 1987, Chapter VII.

[2]See, e.g., *SEC* v. *Certain Unknown Purchasers, et al.*, 81 Civ. 6553 (S.D.N.Y.) (WCC); *SEC* v. *Tome*, 833 F.2d 1086 (2d Cir. 1987), cert. denied Nos. 87-1321, 87-1368 (May 16, 1988); *SEC* v. *Levine*, 86 Civ. 3726 (S.D.N.Y.) (RO). In each case, the defendants used bank accounts in countries with secrecy laws in an effort to conceal their identities, and thereby shield their insider training schemes from the Commissioner.

[3]Section 21(b) of the Exchange Act, 15 U.S.C. 78a(c). See, *CFTC* v. *Nahas*, 783 F.2d 487, 493 (D.C. Cir. 1984) (construing a provision in the Commodity Exchange Act which at the time was nearly identical to Section 21 (b) and (c) of the Exchange Act); cf. *SEC* v. *A.H. Zanganeh*, 470 F. Supp. 1307 (D.D.C. 1978) (holding that the SEC could not subpoena the testimony of a foreign witness merely by serving the subpoena at the offices of a U.S. corporation organized to hold funds for his children).

[4]See, e.g., *SEC* v. *Minas de Artemisia, S.A.*, 150 F.2d 215 (9th Cir. 1945); see also, "In re Marc Rich & Co.," 707 F.2d 663 (2d Cir.), cert. denied, 463 U.S. 1215 (1983) (criminal tax investigation).

[5]Secrecy laws forbid the disclosure of business records or the identity of bank customers. The right to secrecy is held by the person whose secrecy is to be protected and can be waived solely by that person. See generally, Pitt, Hardison, and Shapiro, "Problems of Enforcement in the Multinational Securities Market," 9 U. Pa. J. of Int'l Bus. Law 395, 402-09 (1987).

[6]Another means of gathering evidence located abroad is the use of criminal assistance treaties. The United States is a party to mutual assistance treaties with Switzerland (27 U.S.T. 2019), the Netherlands (T.I.A.S. 10734), Turkey (T.I.A.S. 9891) and Italy (Sen. Ex. 98-25, 98th Cong. 2d Sess.), and may obtain assistance under these treaties for governmental investigations, whether criminal or civil, of potential securities law violations. These treaties provide for the exchange of information in criminal matters, provided the requirements of the treaties have been met. The Commission has utilized one of these treaties, the Swiss treaty. The Commission has confronted problems with that treaty's "dual criminality" requirement, which requires that the conduct being investigated violate both U.S. and Swiss law. One such difficulty was resolved by the passage of insider trading legislation in Switzerland. As a result of that legislation, the U.S. and Switzerland, on November 10, 1987, exchanged diplomatic notes which clarify that the Commission can obtain treaty assistance in insider trading cases.

[7]Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Convention"), "opened for signature" March 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444.

[8]See generally, E. Greene, A. Cohen, and L. Matlack, "Problems of Enforcement in the Multinational Securities Market," 9 U. Pa. J. of Int'l Bus. Law 325, 344-45 (1987).

[9]See, *Societe Nationale Industrielle Aerospatiale* v. *U.S. District Court for the Southern Dist. of Iowa*,

107 S. Ct. 2542 (1987) ("In many situations the Letters of Request procedure authorized by the Convention would be unduly time consuming and expensive as well as less certain to produce needed evidence than direct use of the Federal Rules").

[10]One commentary has described the benefits of MOUs as follows:

"The advantages of MOUs from the SEC's viewpoint are significant. First, a MOU can establish detailed procedures governing areas of concern. Second, a MOU can establish a timetable governing the handling of the SEC's request, and place reasonable limitations on customers'; rights to appeal decisions to grant the SEC access. In addition, a MOU need not be formally ratified by the United States Senate and the corresponding body in the foreign jurisdiction, which permits the SEC to invoke the MOU's provisions at an earlier date. From the perspective of foreign jurisdiction, MOUs offer hope that the SEC will refrain from invoking the compulsory processes of the United States court which are viewed as a challenge to the sovereignty of the foreign jurisdiction."

Pitt, Hardison and Shapiro, "Problems of Enforcement in the Multinational Securities Market," 9 U. Pa. J. of Int'l Law 375, 435 (1987).

[11]Memorandum of Understanding between the Government of the United States of America and the Government of Switzerland, 22 I.L.M. 1 (1983).

[12]For example, under Section 21(a) of the Exchange Act, the Commission's investigatory authority is generally limited to inquiries involving the laws it administers.

[13]See e.g., *Fonseca* v. *Blumenthal*, 620 F. 2d 322 (2d Cir. 1980). But see "Letter of Request from the Crown Prosecution Service of the United Kingdom," No. 88-0028 (D.D.C., March 21, 1988); "In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago," 648 F. Supp. 464 (S.D. Fla. 1986).

[14]Securities Act, Qub. Rev. Stat. ch. V-1 (1977). To our knowledge, the only other country with such authority is Switzerland, which provides such investigative assistance in cases where the offense under investigation would also violate Swiss criminal law and where reciprocal assistance is available from the requesting country.

[15]The Commission works closely with the Departments of State and Justice in its international enforcement efforts and, as a result, does not anticipate that the proposed legislation will create any conflicts with the Executive Branch. Moreover, any such conflict would more likely occur when the Commission pursues an investigation abroad, as it currently does, than when the Commission agrees to investigate a matter in the United States at the request of a foreign authority, as the proposed legislation would permit.

[16]*Cf.* Greene, supra note 8, at 355 ("although agreements for assistance may be a more tangible benefit to the SEC in the short run, both the United States and foreign nations are likely to desire such assistance in the long run").

[17]For example, under the MOU with the U.K. Department of Trade and Industry, a request is required to clearly set forth: (a) the information requested; (b) the general purpose for which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter which is the subject of the request; (c) the grounds on which breach of the legal rule or requirement is suspected or the reason the information is otherwise sought; (d) the identity of the person whose conduct causes concern.

[18]Because testimony would be taken pursuant to existing investigative procedures, a witness would be entitled to assert all relevant rights and privileges of the United States. In addition, a witness would be entitled to assert privileges available in the country seeking the evidence even in cases where the United States does not recognize the privileges. Issues of privilege would be preserved on the record for later consideration by a court of the requesting authority. The Commission anticipates that foreign countries providing reciprocal assistance to the Commission will follow a similar procedure.

[19]As discussed below (*infra*, p. 27), SRO's which do not "enforce" or "administer" securities laws are included under this legislation in the broader definition of "foreign financial regulatory authority." By requiring that the "foreign securities authority" be the originator of requests, the Commission anticipates that it will receive requests for assistance from a single authority or only a few authorites in one country instead of from a wide range of SROs with varying responsibilities. This approach will enable the Commission to develop a working relationship with the authorities who have the broadest legal mandate to oversee securities matters in their country.

[20]The amendment, by providing "notwithstanding the provision of * * * any other law," would also provide authority for the Commission to withhold documents subject to a third-party subpoena.

[21]Certain statutes have been found to preempt or supersede FOIA. See, e.g., *Ricchio* v. *Kline*, 773 F.2d 1389, 1392 (D.C. Cir. 1985) (Holding that FOIA was preempted by the Presidential Recordings and Materials Preservation Act, the sole purpose of which is "to preserve" and "to provide access to" a certain specific body of records).

[22]Absent a "good faith" standard, the statute might bind the Commission to follow the dictates of a foreign government. The "good faith" requirement is intended to permit the Commission to inquire into the legitimacy of the foreign government's non-disclosure request and also to provide some basis for judicial review of the Commission's decision.

[23]Rule 30-4(a)(7), 17 C.F.R. 200.30-4(a)(7).

[24]17 C.F.R. 203.2. Other relevant rules include: Rule 2.5(b) of the Commission's Rules On Informal and Other Procedures, 17 C.F.R. 202.5(b), which states that the Commission may "grant requests for access to its files made by domestic and foreign governmental authorities, self-regulatory organizations such as stock exchanges or the [NASD], and other persons or entities"; Administrative Regulation 19-1(1)(b), SECR 19-1(1)(b), which provides that "the prohibition[s] aganist the use of non-public information or documents" imposed by various Commission rules do "not apply to the use of such materials as necessary or appropriate by members of the staff in pursuing Commission investigations, examinations or in the discharge of other official responsibilities"; Administrative Regulation 19-1(1)(c), SECR 19-1(1)(c), which sets forth a policy approving the use of nonpublic materials and the furnishing of "such assistance as may be required for the effective presentation or prosecution of a case" in circumstances where the Commission refers matters to the Justice Department or grants access to its files to any federal, state or foreign government authority; and the Commission's uncodified policies and procedures concerning the "routine uses" of systems of records in the Commission's possession that are covered by the Privacy Act. See 41 Fed. Reg. 41550 (September 22, 1976) and "SEC Systems of Records—Privacy Act of 1974" (July, 1983) (unofficial document).

[25]Prior to the 1975 Amendment, the Commission provided confidential treatment under both the FOIA rules and under Section 24(a), which at that time prescribed standards for granting confidential treatment to information filed with the Commission. The Amendments were intended to end the latter procedure. See S. Rep. No. 94-75, 95th Cong., 1st Sess. 137, reprinted in 1974 U.S. Cong. & Admin. News 179, 314.

[26]By including the phrase "notwithstanding any other provision of law," the amendment will supersede the disclosure provisions of Section 45(a) of the Investment Company Act and Section 210(b) of the Investment Advisers Act.

[27]Commission policy now requires that the person making the access request state the purposes for which the requested information will be used and certify that no public use will be made of the information except for the purposes specified. It is expected that these or similar procedures would continue to be used after the legislation is enacted. In addition, in the international context, MOUS delineate the public uses that can be made of information which the Commission provides pursuant to the access program.

[28]*See* H.R. Rep. No. 95-1383, 95th Cong., 2d. Sess., (1978) at 247.

[29]See Report, supra note 1, at Chapter II. As to investment companies, the report states that there has been a dramatic increase in the number of U.S. investment companies that emphasize foreign securities in their portfolios and that it has become more common for investment companies registered in the U.S. to issue their securities in foreign markets. As of January 1988, there were 154 registered investment companies of all types that concentrate their portfolio securities in foreign securities. These funds, which are widely held by U.S. investors, use foreign broker-dealers to execute portfolio transactions, foreign custodians to hold portfolio securities and foreign advisers to help manage their portfolios. As to broker-dealers, major foreign markets usually facilitate entry by granting national treatment to U.S. securities firms. France has substantially increased access to its markets by foreign firms, id. at V-3, and the Tokyo Stock Exchange recently increased the number of seats allocated to foreign firms. Affiliates of U.S. broker-dealers now engage in significant market-making activities in London. Id. at V-21.

[30]See id. at I-14-16; II-78-90. The report indicates that over 120 investment advisers from 20 countries have registered with the Commission. As to investment companies, in 1984, the Commission transmitted a legislative proposal to Congress that would amend Section 7(d) of the Investment Company Act to give the Commission greater flexibility in permitting foreign investment companies access to the U.S. securities markets. Although this proposal never was introduced in either House of Congress, the Commission anticipates renewed interest in a legislative proposal to amend Section 7(d). In addition, the Commission is considering the possibility of reciprocal arrangements between the U.S. and foreign nations with respect to multinational offerings of mutual fund securities. Finally, recently-adopted Rule 6c-9 will facilitate the offering of foreign bank securities in the U.S. Investment Company Act Rel. No. 16093 (Oct. 29, 1987).

As to broker-dealers, about 150 foreign firms had established branches in the United States as of 1987; for their part, U.S. firms had over 250 branches in foreign countries, excluding Canada and Mexico. Id. at Chapter V, Appendix B-66 (remarks of James M. Davin, Vice-Chairman, NASD).

[31]As a result, when such a person seeks to become associated with a member of an SRO, that SRO and the Commission have the opportunity to give special review to the person's employment application or to restrict or prevent reentry into the business where appropriate for the protection of investors. See Section 15A(g)(2) of the Exchange Act and Rule 19h-1 thereunder.

[32]Section 15(b)(6) of the Exchange Act and Section 203(f) of the Investment Advisers Act authorize the Commission to limit the activities of a person associated or seeking to become associated with a broker-dealer or investment adviser if the Commission finds that the person has committed any of the acts or has been convicted or enjoined as designated in Section 15(b)(4) or Section 203(e). As a result, any addition to the Commission's authority under Section 15(b)(4) and Section 203(e) will, by implication, expand the Commission's authority under Section 15(b)(6) and Section 203(f).

[33]"Investment Trusts and Investment Companies: Hearings Before a Subcommittee on the Senate Committee on Banking and Currency," 76th Cong. 3d Sess. 7, 31, 559 (Statement of Honorable Charles F. Adams) (1940); "Investment Trusts and Investment Companies: Hearings Before a Subcommittee on the House of Representatives Committee on Interstate and Foreign Commerce," 76th Cong., 3d Sess. 13, 46, 97 (1940). As to Section 15(b)(4)(B) of the Exchange Act (originally Section 15(b)(5)(B), see "Report to Accompany H.R. 6793," H. Rep. No. 1418, 88th Cong., 2d Sess. 21 (1964).

[34]"In the Matter of R.P. Clarke & Co.," 10 S.E.C. 1072 (1942). See also, L. Loss, "Securities Regulation" 1303, n. 51 (2d ed. 1961) (citing *R.P. Clarke* decision and stating that the Commission may impose sanctions under Section 15(b)(4)(B) based upon a conviction in a foreign court).

[35]See Section 15(b)(4)(A) of the Exchange Act and Section 203(e)(1) of the Investment Advisers Act.

[35]See Section 9(b)(1) of the Investment Company Act.

[36]See Section 15(b)(4)(D) of the Exchange Act and Section 203(e)(4) of the Investment Advisers Act.

[37]See Section 9(b)(2) of the Investment Company Act.

[38]See Section 15(b)(4)(E) of the Exchange Act and Section 203(e)(5) of the Investment Advisers Act.

[39]See Section 9(b)(3) of the Investment Company Act.

[40]Section 15(b)(4)(C) of the Exchange Act; Section 203(e)(3) of the Investment Advisers Act; and Section 9(a)(2) of the Investment Company Act.

[41]Similarly, in a Commission review, pursuant to 15 U.S.C. 19(d)-(f), of an SRO disciplinary or membership proceeding against a person subject to a statutory disqualification, the Commission might find it necessary to remand the proceeding to the SRO for relitigation of the underlying offense in

cases where persuasive due process or jurisdictional challenges to the foreign proceeding are made.

[42]As noted (supra note 32), Section 15(b)(6) of the Exchange Act and Section 203(f) of the Investment Advisers Act authorize the Commission to limit activities of a person associated or seeking to become associated with a broker-dealer or investment adviser if the Commission finds that the person has committed any of the acts or has been convicted or enjoined as designated in Section 15(b)(4) or Section 203(e). Because Title II requires the addition of new paragraphs in Section 15(b)(4) and Section 203(e), the legislation will provide for conforming amendments to Section 15(b)(6) and Section 203(f). Title II would also make conforming amendments to Sections 15B(c), 15C(c), 15C(f) and 17A(c) of the Exchange Act.

[43]Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking and Currency, 76th Cong., 3d Sess. 46 (1940).●

INTERNATIONAL SECURITIES ENFORCEMENT COOPERATION ACT OF 1988

● Mr. GARN. I am pleased to be able to cosponsor the International Securities Enforcement Cooperation Act of 1988. This is an important piece of legislation that will better enable the Securities and Exchange Commission to deal with the unique enforcement problems arising from the internationalization of the securities markets. The increased stabilization of securities trading has presented new opportunities for trading abuses, therefore, it is incumbent upon us to ensure that the SEC has the appropriate tools to combat securities fraud which affects U.S. investors but which may originate abroad. By the same token, the legislation would allow the SEC to assist foreign authorities in their inquiries. We would be loath to allow the U.S to be used as a safe haven for foreign securities law violators. The legislation does, however, raise concerns about the appropriate scope of enforcement cooperation and I look forward to hearings on these issues which will better flush out these important matters.●

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 2545. A bill to redesignate Salinas National Monument in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

SALINAS PUEBLO MISSIONS NATIONAL MONUMENT ACT

● Mr. BINGAMAN. Mr. President, I rise today on behalf of myself and Senator DOMENICI to introduce legislation to rename Salinas National Monument in New Mexico the Salinas Pueblo Missions National Monument. The new name is needed because it better communicates the nature of the area and helps emphasize its role in the history of our Nation.

Salinas National Monument consists of three noncontiguous resource areas located in east central New Mexico known as Gran Quivira, Abo, and Quarai. Located on prehistoric north-south and east-west trade routes, Salinas was a place of cultural interchange. Indian groups known to have lived or traded in the area during prehistoric and historic times include the Anasazi, Mogollon, and Plains indians.

During Spanish Colonial times Salinas became a frontier province known as the Salinas Jurisdiction where salt, hides, pinon nuts, and other goods were collected and traded. The area acquired this name from large salt lakes that formed the basis for trade and settlement. This area also served for a time as an important center of mission activity.

Salinas was abandoned in the 1670's, left to the elements by both the Spanish and Indians of the time. Reoccupation did not occur for almost 200 years. Salinas thus became a unique time capsule, surviving relatively undisturbed to present times, an example of Spanish/Indian life in the seventeenth century offering unique opportunities for research and interpretation to those visiting the area.

Headquarters and visitor center for the national monument are located in Mountainair, on New Mexico Highway 60. Since its establishment in December 1980, tourism attracted by the monument has become an increasingly important element to the local economy. Industry in the area is limited and unemployment a continuing problem.

Renaming the monument will encourage visitation by tourists interested in our Pueblo and Mission heritage that might otherwise not realize the unique place this site plays in the history of our Nation. In doing so it will also contribute to the economy of Mountainair and surrounding communities.

For these reasons, I encourage my colleagues to support this legislation to rename Salinas National Monument the Salinas Pueblo Missions National Monument.●

By Mr. QUAYLE (for himself and Mr. HATCH):

S. 2546. A bill to provide child care assistance to low-income working parents; to amend the State Dependent Care Development Grants Act to provide block grants to States; to amend the Internal Revenue Code of 1986 to provide a refundable tax credit to parents for dependents under age 6; and for other purposes; to the Committee on Finance.

CHOICES IN CHILD CARE ACT

● Mr. QUAYLE. Mr. President, I am introducing a proposal entitled, "The Choices in Child Care Act of 1988", to provide Federal assistance to low-income families for child care. I am pleased that the Senator from Utah [Mr. HATCH] is a cosponsor of this bill. We have seen many proposals in this area over the last several months. I am adding this proposal to the many already being discussed because, I believe, this bill embodies the principles upon which a Federal program should be based.

Let me briefly discuss these guiding principles.

First, the Federal Government should help all families with children, not just families in which both parents work. The family in which one parent, usually the mother, stays at home does so often at financial loss. The Federal Government should help these families that give up a second income to raise their children themselves, as well as families in which both parents work. My bill would do this.

Second, the Federal Government should not encourage one type of child care arrangement over others. We cannot be in the business of telling families how they should care for their children. The bill I am introducing will permit complete choice by parents in the care of their children. It provides benefits in a neutral fashion, not favoring any type of care.

Third, the Federal Government needs to lower the tax burden of families with children. Between 1960 and 1984, the average tax rate for a couple with two children increased 43 percent; for a couple with four children, the increase was 223 percent. If the personal exemption for children kept pace with inflation, it would now be $5,000. My bill lowers the tax burden of all families with children in the middle- and lower-income brackets by providing a tax credit.

Fourth, with limited Federal resources, it is important to target resources to low- and moderate-income families. This bill would provide general tax assistance to families with incomes below $40,000, increasing to $45,000 over several years and additional child care assistance for families with incomes below 185 percent of poverty.

Fifth, the Federal Government must not discriminate against child care affiliated with religious organizations. One of the major child care proposals that has already been introduced, the Act for Better Child Care, does not allow Federal funds to be used for child care affiliated with religious organizations. This type of discrimination against families that choose to have their children raised in a religious atmosphere is intolerable. We must allow parents to choose the situation they wish for their children, and if that means child care affiliated with religious organizations, it should be allowed. Should we exclude such care, we would also be ignoring a large number of effective and caring child care providers, which often assist many low-income families.

Sixth, any Federal subsidies should go to parents and not to service providers. Child care is one area where we do not need a large Federal or State bureaucracy. We have enough bureaucracries to deal with welfare, and food stamps, and health care, and Social Security. Let's not create another one

to lose our children in. My bill would give the vast majority of benefits directly to families and children.

Seventh, use the natural affection of parents for their children as the fundamental quality control mechanism. Federal regulation of child care will stifle the growth of some of the best child care available—that provided under informal arrangements with relatives, neighbors, or friends. Parents will naturally seek the best care for their children that they can find. Let's let the market flourish based upon demand.

These are the principles I feel would make a good child care bill. They are all contained in my proposal.

Briefly, my bill would:

Authorize supplemental assistance of $400 million to low-income working parents. States would be awarded funds to provide child care certificates for families with incomes below 185 percent of poverty to use for child care by any registered provider. States would be required to match these funds by 30 percent.

Expand the existing dependent care block grant to $200 million to permit States to address the availability and quality of child care. States would be required to match these funds by 30 percent.

Authorize tax credits to low- and middle-income families with young children. A tax credit of $400 maximum per child under the age of 6 for families with incomes under $20,000 would be authorized. This credit would be phased out for families with incomes between $20,000 and $40,000, with the cutoff increasing to $45,000 over several years.

Authorize incentives for employers to provide child care by providing a 10-percent tax credit for capital expenses incurred in establishing child care facilities for employees.

Streamline the self-employment taxes for home-based providers.

The total cost of this proposal would be $7 billion over a 5-year period, which is a large amount of money. But these funds will go directly to families, for the most part, and they will be targeted on low- and moderate-income families.

This bill was introduced by Representative TOM TAUKE in the House of Representatives after much study on his part. I am pleased to offer the same bill in the Senate.

I hope my colleagues will take time to review this legislation and the principles I outlined above. I believe they must be the groundwork for any Federal program in child care.●

By Mr. GORE (for himself and Mr. SASSER):

S. 2547. A bill to designate the Federal building in Knoxville, TN, as the "John J. Duncan Federal Building"; to the Committee on Environment and Public Works.

JOHN J. DUNCAN FEDERAL BUILDING

Mr. GORE. Mr. President, I would like to join my fellow Tennesseans in expressing the deepest gratitude to Congressman JOHN J. DUNCAN for his relentless devotion and valuable service to the State of Tennessee. Today, I am introducing legislation, along with my colleague, the senior Senator from Tennessee [Mr. SASSER], to designate the new Federal building in Knoxville, TN, as the "John J. Duncan Federal Building."

It seems highly appropriate to commemorate JOHN DUNCAN'S 24 years of leadership in the U.S. House of Representatives, for the Second Congressional District and for all Tennesseans, by lending his name to the Federal building built to serve the area to which he has devoted much of his life.

JOHN DUNCAN'S announcement of his retirement at the end of the 100th Congress was received by me, and I know all of my colleagues, with a great sense of sadness. His service and leadership in Congress will be greatly missed. I am deeply saddened by the news of his illness, and my thoughts and prayers for his recovery are with him and his family.

At the same time, Mr. President, the news of his retirement calls to mind his distinguished career and stirs our appreciation for it. JOHN DUNCAN can reflect on his life-long service as a husband and father and as a strong voice in Tennessee politics with pride and acknowledgement of the strength which lies in firm dedication and integrity of character. He is devoted to his wife, Lois, and his four children—Beverly, James, Joe, and Rebecca Jane—and his nine grandchildren.

JOHN DUNCAN was born in Scott County, TN, and after completion of his service in the U.S. Army he attended the Cumberland University Law School. His career achievements span all realms of public service: he was assistant attorney general for the State of Tennessee and city of Knoxville law director. He was elected mayor of Knoxville in 1959 and served outstandingly. He has served this district in Congress since his election in 1969, during which time he has maintained close contact with the residents in his district by coming home nearly every weekend for local events, celebrations and meetings.

In Congress, he rose to a position of power and influence as the ranking minority member of the House Ways and Means Committee, but has remained attentive to the needs of his district. He has served on the Joint Committee on Taxation. He has received much well-deserved recognition for serving Tennessee on these committees and in other legislative areas. Such a career of public service is refreshing and serves as inspiration to those who pursue a life in this profession.

Congressman JOHN DUNCAN will be missed by the entire Tennessee delegation and all the Members of Congress; however, the work he has done and the progress he has made on behalf of Tennessee will endure. I urge my distinguished colleagues to join me in supporting this legislation to name the Knoxville Federal building for JOHN J. DUNCAN.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2547

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Building located at 710 Locust Street, Knoxville, Tennessee is designated, and shall be known as, the "John J. Duncan Federal Building". Any law, regulation, map, document, record, or other paper of the United States in which such building is designated or referred to shall be held to refer to such building under and by the name of the "John J. Duncan Federal Building".

By Mr. DIXON:

S. 2548. A bill to suspend temporarily the duty on certain glass bulbs until January 1, 1993; to the Committee on Finance.

DUTY SUSPENSION ON CERTAIN GLASS BULBS

● Mr. DIXON. Mr. President, a company in my State, the Clinton Electronics Corp. of Rockford, is facing an unnecessary trade problem.

Clinton makes monochrome cathode ray tubes for use in word processors, computer terminals, and other similar products. They are the only domestic producer of monochrome cathode ray tubes. Their competition is solely international and comes mainly from Japan.

One of the most essential components of this product is not produced in the United States. Consequently, Clinton imports this part, a monochrome glass bulb, from Taiwan. Due to Taiwan's former generalized system of preference [GSP] status, Clinton had been able to import this part duty free.

The competition in the monochrome cathode ray tube market is fierce and, as a result, the profit margin is slim. The Japanese, in particular, sell their product at a very low price. Clinton's ability to import monochrome glass bulbs duty free has allowed them to keep their costs low and to remain competitive in the monochrome cathode ray tube market.

Recently, the President has decided that Taiwan no longer merits GSP status. The loss of GSP status for all of Taiwan's products means that monochrome glass bulbs can no longer be

imported into the United States duty free. As a result, Clinton petitioned the U.S. Trade Representative to preserve the duty-free status of monochrome glass bulbs. Unfortunately, because similar products—which cannot be used in the manufacture of Clinton's cathode ray tubes—are made in the United States, USTR refused to grant the exemption Clinton needed.

The problem stems from the Government's wide classification of glass bulbs. Customs does not make any distinction between monochrome and other types of glass bulbs. Consequently, although U.S. law mandates the restoration of duty-free status for a product if there is no domestic production of a like or competitive item, according to Custom's classification there is domestic production of a competitive item. In other words, because Customs sees no evil, there is no evil.

The USTR's decision not to grant a duty exemption to monochrome glass bulbs is bad trade policy. It is a mistake because it unnecessarily places the sole remaining U.S. supplier of a product at a competitive disadvantage for no other reason than for adherence to out-of-date rules.

We in the Congress can rectify Clinton's situation by directing Customs to allow Clinton Electronics to continue to import monochrome glass bulbs duty free. Today, I am introducing a bill which would direct the Customs Department to retain the duty-free status of monochrome glass bulbs. Clinton Electronics represents the kind of company we want to help. They are the kind of company we should encourage, and not discourage, to compete in the international market.●

By Mr. LAUTENBERG (for himself, Mr. DANFORTH, Mr. GORE, Mr. PELL, Mr. BENTSEN, Mr. WEICKER, Mr. CHAFEE, Mr. LUGAR, Ms. MIKULSKI, Mr. MURKOWSKI, Mr. HEINZ, and Mr. GRAHAM):

S. 2549. A bill to promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes; to the Committee on Commerce, Science, and Transportation.

DRUNK DRIVING PREVENTION ACT

● Mr. LAUTENBERG. Mr. President, today I am reintroducing important legislation aimed at reducing the tragedy of drunk driving. This bill is identical to S. 2367, introduced on May 11.

With introduction of this new bill, I look forward to prompt action by the committees with an interest in seeing this important legislation move forward.

This bill would enhance our fight against drunk driving by encouraging the adoption of tougher, more effective laws. I am pleased to be joined by Senators DANFORTH, BENTSEN, PELL, GORE, WEICKER, CHAFEE, MIKULSKI, LUGAR, MURKOWSKI, HEINZ, and GRAHAM. Along with groups like Mothers Against Drunk Driving, together we're working toward a simple goal—to save lives.

With the passage of the National Uniform Minimum Drinking Age Act in 1984, the Congress took an important step forward in the battle against drunk driving. As the Senate sponsor of that bill, I'm proud to see the results of that action. Today, all 50 States have adopted a minimum drinking age of 21, eliminating "blood borders." A 1985-86 study by the National Highway Traffic Safety Administration found that over an 18-month period, almost 850 young lives were saved, largely due to the increased minimum drinking age. With "21" now fully in effect, we expect to spare 1,000 families the grief of a lost child each year.

But the battle against drunk driving is far from over. A drunk driving fatality occurs every 22 minutes in this country. Drunk driving has to be reduced among drivers of all ages.

An essential component of our continuing efforts must be enhanced enforcement of Federal, State, and local laws. Our bill would help States meet that goal.

The bill would authorize Federal seed money to States to help establish self-sustaining drunk driving prevention programs. In order to be eligible for this program, States would have to put into place a self-supporting enforcement program, under which fines and surcharges collected from individuals convicted of drunk driving are returned to communities for enforcement.

States would also have to adopt laws that provide for the prompt suspension or revocation of the license of a driver found to be driving under the influence of alcohol. A recent study released by the Insurance Institute for Highway Safety [IIHS] showed that such laws reduce drunk driving fatalities by 9 percent.

In addition to being eligible for grants under these two basic requirements, States could also receive supplemental funds for adoption of either or both of the following procedures: First, a means of making drivers licenses of those under the legal drinking age readily distinguishable from those of drivers of legal drinking age; and second, the mandatory blood alcohol testing of drivers involved in fatal or serious accidents.

Finally, the bill would direct the Secretary of Transportation to commission a study by the National Academy of Sciences on the appropriate blood alcohol concentration at which a driver should be deemed to be under the influence of alcohol.

Mr. President, the importance of this legislation is apparent to anyone who has suffered the loss of a loved one. Recently, I listened to the tragic story of Bob Gore. Mr. Gore was vacationing in Hawaii with his 24-year-old son and daughter, when his children were killed by a drunk driver. This was not the first time that driver had been guilty of driving drunk. But he was still able to drink and drive. That is an outrage that must be corrected. That's what this bill would do.

That drunk driver has now been convicted of manslaughter in the death of the Gores. But in the 15 months between their deaths and the conviction, he was allowed to go on driving. In fact, Mr. Gore told us that the last thing the convicted killer of his children did before leaving the courtroom was to turn over his drivers license. If that had been done after his earlier transgressions, perhaps that tragedy might never have happened.

Nothing can be done to bring lost loved ones back. But we can take steps to keep tragedies like the one that killed the Gores from happening to other families. I want to commend Mr. Gore for his commitment to this effort. He's turning his personal grief into a positive force, trying to spare others. For that, he deserves to be commended.

I'm pleased to be joined in this effort by Mothers Against Drunk Driving, the Insurance Institute for Highway Safety, and the National Safety Council. This coalition has been successful before, providing crucial force behind the minimum drinking age bill. I look forward to continued success with this legislation, and urge my colleagues to join in cosponsoring the bill.

Mr. President, I ask unanimous consent that a copy of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2549

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Drunk Driving Prevention Act of 1988".

SEC. 2. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§409. Drunk driving enforcement programs

"(a) Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement drunk driving enforcement programs which include measures, described in this section, to improve the effectiveness of the enforcement of laws to prevent drunk driving. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require

to ensure that such State will maintain its aggregate expenditures from all other sources for drunk driving enforcement programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the drunk driving enforcement program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

"(d)(1) Subject to subsection (c) of this section, the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) of this section shall equal 30 per centum of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

"(2) Subject to subsection (c) of this section, the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(2) of this section shall not exceed 20 per centum of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

"(e) For purposes of this section, a State is eligible for a basic grant if such State provides for—

"(1) an expedited driver's license suspension or revocation system which requires that—

"(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense, and such individual is determined, on the basis of one or more chemical tests, to have been under the influence of alcohol while operating the motor vehicle concerned or refuses to submit to such a test as proposed by the officer, such officer shall serve such individual with a notice of suspension or revocation, which shall provide information on the administrative procedures by which a State may suspend or revoke a license for drunk driving and specify any rights of the driver in connection with such procedures, and shall take possession of the driver's license of such individual;

"(B) after serving such notice and taking possession of such driver's license, the law enforcement officer shall immediately report to the State entity responsible for administering driver's licenses all information relevant to the enforcement action involved;

"(C) upon receipt of the report of the law enforcement officer, the State entity responsible for administering driver's licenses shall, where an individual is determined on the basis of one or more chemical tests to have been intoxicated while operating a motor vehicle or is determined to have refused to submit to such a test as proposed by the officer, (i) suspend the driver's license of such individual for a period of not less than ninety days if such individual is a first offender and (ii) suspend the driver's license of such individual for a period of not less than one year, or revoke such license, if such individual is a repeat offender;

"(D) such suspension or revocation shall take effect at the end of a period of not more than fifteen days immediately after the day on which the driver first received notice of the suspension or revocation; and

"(E) the determination as required by subparagraph (C) of this paragraph shall be in accordance with a process established by the State, under guidelines established by the Secretary to ensure due process of law, (i) for such administrative determinations and (ii) for reviewing such determinations, upon request by the affected individual within the period specified in subparagraph (D) of this paragraph; and

"(2) a self-sustaining drunk driving enforcement program under which the fines or surcharges collected from individuals convicted of driving a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of drunk driving.

"(f) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition such State provides for—

"(1) mandatory blood alcohol content testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a collision resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense; or

"(2) an effective system for preventing drivers under age 21 from obtaining alcoholic beverages, which may include the issuance of driver's licenses to individuals under age 21 that are easily distinguishable in appearance from driver's licenses issued to individuals 21 years of age or older.

"(g) There are authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $25,000,000 for the fiscal year ending September 30, 1989, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1990, and September 30, 1991. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway finds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

(b) The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following:

"409. Drunk driving enforcement programs.".

SEC. 3. (a) Not later than 30 days after the date of enactment of this Act, the Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration level at or above which an individual when operating a motor vehicle is deemed to be driving while under the influence of alcohol.

(b) In entering into any arrangement with the National Academy of Sciences for conducting the study under this section, the Secretary shall request the National Academy of Sciences to submit, not later than one year after the date of enactment of this Act, to the Secretary a report on the results of such study. Upon its receipt, the Secretary shall immediately transmit the report to the Congress.

SEC. 4. The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 409 of title 23, United States Code, not later than December 1, 1988. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress before March 1, 1989.●

● Mr. DANFORTH. Mr. President, I am pleased to join Senators LAUTENBERG, GORE, BENTSEN, WEICKER, HEINZ, and MURKOWSKI in sponsoring the Drunk Driving Prevention Act of 1988. Its goal is an important one—stopping drunk drivers from killing and injuring innocent citizens.

The bill that we are introducing today is word for word identical to the Drunk Driving Prevention Act of 1988, S. 2367, which Senator LAUTENBERG and I and several other Senators introduced on May 11, 1988.

The bill was erroneously referred to the Environment and Public Works Committee. The bill should have been referred to the Commerce Committee. Paragraph 4 of section 1(f)(1) of Senate Rule XXV provides that highway safety is within the jurisdiction of the Commerce Committee. The bill provides for incentive grants to be administered by the Department of Transportation. These grants would be calculated as a percentage of a State's highway safety grant funds provided under title 23 section 402 of the United States Code. These 402 funds are authorized by the Commerce Committee.

In fact, Mr. President, this bill is very similar to a bill I introduced in the 98th Congress, S. 1108, and a bill I introduced in the 97th Congress, S. 2158. Both of these bills contained provisions authorizing the Department of Transportation to provide incentive grants to States that enact and enforce tough drunk driving laws. The jurisdiction is clear, and I fully expect the bill to be referred to the Commerce Committee.

Mr. President, I have explained why the bill is being reintroduced. I would now like to turn to the merits of this proposal.

We have made some progress in the fight against drunk driving. According to the National Highway Traffic Safety Administration, in 1982, 25,170 Americans were killed in alcohol-related crashes. In 1987, there were an estimated 23,500 alcohol-related fatalities, a decrease of 7 percent.

How did we make this progress? One way we made progress was by encouraging States to pass tough laws to combat drunk driving. In 1982, I authored, with Senator PELL, legislation

to provide States incentive grants if they passed a law with each of the following provisions: First, a provision requiring prompt license suspension for a minimum period of 90 days on the first offense and for 1-year on the second offense; second, a provision establishing a 0.10-percent blood alcohol content [BAC] per se intoxication standard; and third, a provision requiring a jail sentence of 48 hours or at least 10 days of community service on the second drunk driving offense within 5 years. To date, 16 States have qualified for these grants by passing laws with the required provisions.

In 1984, we took further steps to fight drunk driving. We passed the National Minimum Drinking Age Act. Since that legislation's enactment, all 50 States have adopted a minimum drinking age of 21. The States' adoption of the minimum drinking age has eliminated "blood borders"—areas where young people would drive across State lines to buy alcohol. The 1984 legislation also included provisions I authored expanding the 1982 incentive grant program to include States using grants to prevent drugged driving, and to provide grants to States who update and computerize their traffic record keeping systems.

Even with these stronger laws, alcohol is involved in the deaths of over 50 percent of those killed in highway crashes. We have made some progress, but we are far from satisfied. The recent Kentucky bus crash in which a drunk driver killed 27 innocent people is a grim reminder that we must take further steps to combat drunk driving.

Mr. President, our bill would authorize Federal seed money for States that enact and enforce laws shown to be effective weapons in the fight against drunk driving. There would be two requirements for receiving a basic grant under this legislation.

First, a State would have to establish a self-supporting prevention program under which fines collected from convicted drunk drivers would be returned to communities for enforcement.

Second, a State would have to adopt an administrative per se law under which a police officer could immediately confiscate a drunk driver's license at the point of arrest. Such a law removes a demonstrated hazard from the highways. A recently released Insurance Institute for Highway Safety study found that such laws reduce drunk driving fatalities by 9 percent in those States that adopt them.

The bill would enable States to receive supplemental funds for meeting either or both of the following requirements: First, making the drivers' licenses of those under the legal drinking age readily distinguishable from the licenses of drivers of legal drinking age; and second, requiring blood alcohol content testing of drivers involved in fatal or serious accidents.

In addition, our bill would require the Secretary of Transportation to commission a study by the National Academy of Sciences on the BAC level at which a driver should be deemed to be under the influence of alcohol.

Mr. President, this drunk driving prevention bill has the support of Mothers Against Drunk Driving and the National Safety Council. With their support and with the support of our colleagues, we can help to stop the unnecessary slaughter of innocent people on our highways.●

By Mr. SYMMS:

S. 2550. A bill to amend title 23, United States Code, to eliminate a reduction of the apportionment of Federal-aid highway funds to certain States, and for other purposes; to the Committee on Environment and Public Works.

REPEAL OF SPEED LIMIT COMPLIANCE REQUIREMENTS AND HIGHWAY FUNDING SANCTIONS

Mr. SYMMS. Mr. President, I am pleased to introduce this bill to eliminate the highway funding sanctions and speed compliance requirements associated with the national maximum speed limit law. Approval of this measure will end a Federal compliance process which forces many States to choose between saving money and saving lives. Having considered speed limit issues for some time, I can tell my colleagues confidently that this bill will save lives and reduce the thousands of serious injuries occurring annually on our Nation's highways.

Currently, States must report to the Secretary of Transportation speed monitoring data on highways posted at 55 mph, and they are considered in compliance if at least 50 percent of the vehicles on those highways are traveling at or below the speed limit. A State found to be out of compliance is subject to the loss of up to 10 percent of its primary, secondary, and urban highway funds. The compliance requirements and funding sanctions are supposed to enhance highway safety by ensuring that States are enforcing "55."

Unfortunately, the combination of compliance requirements and sanctions often detracts from highway safety, rather than enhancing it. Here's how: although interstates are by far the safest highways in the country, most high-speed travel occurs on the Interstate System, States with speed data approaching the 50-percent non-compliance mark often choose to beef up traffic patrols on interstate highways in order to stay in compliance and avoid the loss of highway funds; putting more troopers on interstate speed control duty detracts from drunk driving enforcement, speed control, and other safety enforcement programs on the far more dangerous noninterstate highways. The result is more highway fatalities and injuries, not less. The cause is this federally imposed program of compliance requirements and funding sanctions.

The assertion that speed compliance requirements and sanctions detract from highway safety is not made by this Senator alone. It has been stated more poignantly by Maurice Hannigan, deputy commissioner of the California Highway Patrol, in testimony before the Environment and Public Works Committee earlier this year. The Commissioner put it like this:

> They [the men and women of the California Highway Patrol] are the practitioners; they are the ones that take the dead out of the vehicles; they are the ones that wait in the waiting rooms of the hospitals. They know what is killing our people, and I can assure you it is not somebody driving 56 to 60 or 62 miles an hour on an open 55 freeway where the conditions permit it.
>
> We * * * have exemplary enforcement programs. Yet * * * we must artificially divert enforcement resources. Enforcement balance is critical. But the threat of sanctions has forced us to the unbalanced approach.
>
> Again, I would encourage the Federal Government to withdraw from the monitoring and sanction process and, rather, join with the States in a cooperative effort to improve traffic safety across the board.
>
> I talked about the number of speed citations we issue. I would gladly trade off every one of those speed citations for a substantial number more of drunk driving arrests, but the system will not allow me to do that. We need more flexibility, Mr. Chairman. That is what I am saying, and the monitoring and sanction process that exists does not allow it.

Mr. President, those are the words of a 25-year veteran of law enforcement in a State accounting for nearly 12 percent of all the vehicle miles traveled annually in this country. I hope my colleagues will heed that voice of experience, and I ask unanimous consent that a copy of Commissioner Hannigan's entire statements be printed in the RECORD following my remarks.

Support for eliminating the compliance requirement and sanctions is not limited to one U.S. Senator and the Nation's largest State highway patrol agency. Dick Morgan, Executive Director of the Federal Highway Administration, and Jeffrey Miller, Deputy Administrator of the National Highway Traffic Safety Administration, both urged Congress to abandon the compliance and sanctioning process in testimony before the Environment and Public Works Committee earlier this year. I quote an excerpt of their joint statement on this subject:

> * * * the Department [of Transportation] recommends reforming the Federal speed limit law to retain the States' annual certification that no public highway is posted at speeds in excess of the congressional limits and repealing the compliance criteria, repealing the sanctions for noncompliance, and repealing the federally-mandated moni-

toring and reporting requirements. We expect that the States would continue to monitor speeds for their own highway safety programs, and we would strongly encourage them to do so.

Since my bill only repeals the compliance criteria and the sanction for noncompliance but does not repeal the speed monitoring and reporting requirements, it clearly does not go as far as the Department of Transportation recommends in terms of returning enforcement responsibilities to the States. I concur with the Department's position on federally imposed monitoring and reporting requirements; however, I do not believe this Congress will approve a bill to repeal those requirements. We will have to leave that bit of regulatory relief for another day.

In March of this year, the Administrators of the Federal Highway Administration and the National Highway Traffic Safety Administration informed the Governors of California, New York, and North Dakota that their States appeared to be in noncompliance for fiscal year 1987 and that the sanctions process was being initiated against their States. Those States now must either show cause for their noncompliance or come back into compliance in succeeding years in order to avoid the permanent loss of highway funds.

While only California, New York, and North Dakota are subject to the loss of highway funds for noncompliance in fiscal year 1987, there are 14 others within 3 percentage points of noncompliance for last year. Those States are: Alaska, Delaware, Florida, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, and Wyoming. Several of these States have had trouble with compliance in the past, and their Senators are already familiar with the tremendous concern raised back home by the spectre of lost highway funds. I urge all Senators to check with the Federal Highway Administration to see what a loss of up to 10 percent of primary, secondary, and urban system highway funds would mean to their States. Those who check will see why State officials will go to extraordinary lengths, including taking enforcement resources away from far more effective highway safety operations, in order to avoid losing highway funds.

I have tried to outline the means by which our current compliance and sanctions programs may force States to choose saving money—a lot of money—over saving lives. We need to abandon that program and return the responsibility for speed limit enforcement to the States where it belongs. Walter Hjelle, commissioner of the North Dakota State Highway Department, put the case clearly and succinctly—as North Dakotans will do—in a February 1988 letter to the commissioner of the California Highway Patrol. Mr. Hjelle said:

Each state legislature cares about its people. It isn't just those in Washington who know what's best for us. North Dakotans want safe highways—it's our lives on the line. * * * We favor complete repeal of the sanction mechanism.

Mr. President, if this Congress wants to do something that will save lives and improve highway safety, we will move this bill forward quickly. I will work to see that we do just that.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill and statement earlier mentioned were ordered to be printed in the RECORD, as follows:

S. 2550

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 141 of title 23, United States Code, is amended—

(1) by striking out subsection (a),

(2) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively, and

(3) by striking out "subsection (b)" each place it appears in subsection (b), as redesignated by paragraph (2), and inserting in lieu thereof "subsection (a)".

SEC. 2. (a) Subsection (c) of section 154 of title 23, United States Code, is amended to read as follows:

"(c) The Secretary shall not approve any project under section 106 in any State that fails to certify to the Secretary by January 1 of each calendar year (1) that any public highway within the State posted at a maximum speed limit of 55-miles per hour or higher and constructed with Federal-aid highway funds has been designed and constructed to standards applicable at the time of construction which are appropriate for the speed permitted on such highway, and (2) that the State has been enforcing, during the 1-year period ending on September 30 of each calendar year, the speed limits on public roads within the State posted at 55-miles per hour or higher. Such certification shall include a statement certifying that the posted maximum speed limits on public highways in the State do not exceed the speed limits allowed under subsection (a).

(b) Section 154 of title 23, United States Code, is amended by striking out subsections (e), (f), (g), and (h).

SEC. 3. Each State shall report to the Secretary speed monitoring data on any public highway with speed limits posted at 55-miles per hour or higher in the same manner and in the same form as such data on public highways with speed limits posted at 55-miles per hour was submitted to the Secretary for the fiscal year immediately preceding the enactment of this Act.

SEC. 4. Section 109 of title 23, United States Code, is amended by adding subsection (p) as follows:

"(p) The Secretary shall not approve plans and specifications for any proposed highway project on a Federal-aid system which is to be posted at a maximum speed limit of 55-miles per hour or higher if such plans and specifications fail to provide for a facility designed and constructed for a speed limit equal to or greater than that to be posted upon completion; *Provided*, That nothing in this subsection is intended to prohibit or restrict the use of advisory speed signs in accordance with accepted practices.".

STATEMENT OF MAURICE J. HANNIGAN, DEPUTY COMMISSIONER, CALIFORNIA HIGHWAY PATROL

Mr. HANNIGAN. How would you like us to start, Mr. Chairman? With myself? Fine.

Good afternoon, Mr. Chairman. I am Maurice Hannigan, the Deputy Commissioner of the California Highway Patrol, and I am here today representing both the State of California, as well as my own agency.

Today, my testimony will focus on the current system of monitoring compliance with the 55 national maximum speed limit and what we feel is an immediate need for a change in this system. I submitted my formal testimony in writing earlier and, with your permission, for time's sake, I will paraphrase my remarks from that testimony.

Senator BURDICK. It would be very much appreciated.

Mr. HANNIGAN. We, along with several of the speakers that came before me today, as I am sure some that will follow, think the 55 monitoring deficiencies demand remedial attention, and we believe that realistic alternatives to the sanction system are at hand and should be adopted. We believed this even before California was subject to sanctions, and we have, through the years, worked actively in generating different approaches to the monitoring system and, in fact, served on the National Academy of Science panel on their report, "55—A Decade of Experience," which Mr. Deen mentioned earlier.

We, of course, are interested because of the significant impacts the monitoring system has in California, and that interest is heightened by the fact that we are currently facing a sanction in the amount of $58 million of our highway funds for noncompliance of 50.8 percent.

We believe that if Federal oversight must continue to exist, the process should be equitable and based on realistic safety and enforcement principles and, certainly, safety priorities. Most importantly, the Federal oversight program should be keyed to savings lives and accident prevention, not the futile and costly on-going effort of gathering and manipulating numbers for the results of nothing more than the pursuit of 55 compliance for the pursuit of compliance alone.

There are a number of reasons to change the compliance monitoring process, but most of them relate to one of two major failings with the present system: First, that the compliance requirement is totally ineffective in promoting highway safety; second, that the process is inequitable. It fails the fundamental test of establishing an adequate base upon which to make reasonable decisions about imposing sanctions.

For example, and this has been addressed several times today, the current monitoring process makes no distinction of a vehicle traveling 57 miles an hour on an open freeway versus the vehicle traveling 85 or 90 miles an hour on a two-lane winding road.

Anybody that has any sense of priority of traffic safety must realize that the hazard of traveling on a secondary road at high speed versus that of a marginal violation on the full freeway has no comparison. Yet the monitoring process makes no distinction,

and even worse, from our perspective, an enforcement perspective, it virtually compels inappropriate deployment of scarce enforcement resources, meaning that established enforcement principles must be ignored and, along with them, the emphasis on safe vehicle operation.

Safety is also adversely affected by the imposition of sanctions themselves, because sanctions inevitably withhold dollars which fund highway improvements. In reality, lives will be lost because safety improvements are delayed or eliminated by the sanction process. From our perspective, this makes no sense whatsoever, as it flies in the face of trying to improve the highway safety environment.

Now let me switch to the subject of inequities. One of the problems, for example, is how the States measure speeds. Some States classify 56 miles per hour as a violation, and therefore, not in compliance, but others set the break-off at 55.01 mile per hour. This is almost a whole one mile-per-hour difference.

This does not seem significant until you start looking at the percentage of States that are near the noncompliance level, because that 1 mile per hour can make a 5 to 6 percent difference in their compliance rate. Based on that, in 1986, if that factor came into play with those States, almost half the nation would be under sanction.

Also, differences in the road systems can discriminate unfairly. Maryland, for example, has a predominance of interstates and high-grade highways. They typically report higher average speeds, because these roads lend themselves to faster driving. On the other hand, States with more two-lane roadways, a higher percentage of two-lane roadways receive the benefit of averaging in their slower roads.

California has studied a wide range of alternatives to address these problems, and the solutions run the gamut, anywhere from straightforward incentives to the less desirable modification of the existing monitoring formula to reduce inequities. I would like to quickly review some of these approaches that can be considered. But before I do that, let me first state that California has been a strong supporter of the 55 mile-an-hour speed limit and intends to make no significant changes in that support, especially in the urban setting, where we know it saves lives.

Ultimately, I say, it would be desirable for the Federal government to get out of setting traffic safety priorities for the States and let them deal with their safety problems as they deem appropriate, including setting their speed limits. However, recognizing this probably is not feasible within the near future, I would like to touch upon some other alternatives that could be considered in the interim.

Because lifesaving should be the real objective of both the Federal and State governments' involvement in traffic safety, incentives obviously will achieve much more than the sanction process. As an example, awarding incentive grants to States whose mileage death rate improves in a given year will generate innovation and progress in the traffic safety arena, in my opinion.

Another option would simply be to let the governor of a given State certify to the 55 mile-an-hour speed limit being in place within their State and that they are enforcing that provision of law; and do away with the monitoring and sanctions process.

If Congress, in their wisdom, cannot accept these approaches, then examine the concept set forth in H.R. 3129, and H.R. 2, which is basically a point system, which assigns a point scale to speeds in excess of the 55 on freeways versus two-lane county roads. It at least considers the aspect of safety.

However, I should point out to you that this system will discriminate against some States, especially those that have a high percentage of two-lane county roads or two-lane State highways. The NHTSA staff has taken another approach with the H.R. 2 concept and has balanced out this problem by looking at all non-freeways and freeways alike and assigning a higher point value to speeds in excess of 65 miles an hour. If we have to stay under Federal oversight, this would at least be a system that should be considered.

Another option would be for those States that are comfortable with the current monitoring system, to let them certify under that system. Hopefully, Congress would then establish a secondary system that those States which have difficulty with the current system could certify under. This would be a bifurcated approach which may help; but again, it still simply supports the premise of crunching numbers for crunching numbers.

Finally, California supports a safety incentive plan which would permit subtraction of points from the monitoring score based on the State's effort to improve safety. For example, if Congress adopted a new monitoring system and sanction process, and a State had, for example, a mandatory seat belt statute, you could take 50 points off the total score. Other options for point subtraction would be if a State has an aggressive drunk driving program, or a low-mileage death rate, or an aggressive 55 enforcement program; all these could be thrown in to offset the issue of sole noncompliance with the 55 mile-an-hour speed limit.

The fact is, safety is the bottom line. California concurs with the Governors Association's opposition to the philosophical basis for sanctions. Incentives are much more progressive than sanctions, but sanctions, if deemed necessary, must be fair and, most of all, must not undermine safety projects. If, in fact, a State is facing sanctions, if nothing else, that State should have the option of being able to divert those funds to safety projects that were targeted in years to come and move those up in their State transportation improvement plans for the sanction year so that they can be accomplished.

In closing, Mr. Chairman, the California Highway Patrol has always been a strong supporter of the 55 mile-an-hour speed limit. The men and women of our department issue approximately one citation every eleven seconds of the day. In doing that, we issue 3.055 55 mph citations a day. We also apprehend over 400 drunk drivers every day; and we also investigate 600 accidents.

They are the partitioners; they are the ones that take the dead out of the vehicles; they are the ones that wait in the waiting rooms of the hospitals. They know what is killing our people, and I can assure you it is not somebody driving 56 to 60 or 62 miles an hour on an open 55 freeway where the conditions permit it.

We, New York and Maryland, as well as North Dakota, all have exemplary enforcement programs. Yet, and I speak for California here, we must artificially divert enforcement resources. Enforcement balance is critical. But the threat of sanctions have forced us to the unbalanced approach.

Again, I would encourage the Federal government to withdraw from the monitoring and sanction process and, rather, join with the States in a cooperative effort to improve traffic safety across the board.

I talked about the number of speed citations we issue. I would gladly trade off every one of those speed citations for a substantial number more of drunk driving arrests, but the system will not allow me to do that. We need more flexibility, Mr. Chairman. That is what I am saying, and the monitoring and sanction process that exists does not allow it.

I thank you for your time, and I would answer any questions you may want me to entertain.

Senator BURDICK. Thank you for your testimony today.

Our next witness is Mr. James J. Baxter, President of the Citizens for Rational Traffic Laws.

STATEMENT OF JAMES J. BAXTER, PRESIDENT, CITIZENS FOR RATIONAL TRAFFIC LAWS, INC.

Mr. BAXTER. Thank you, Mr. Chairman, Citizens for Rational Traffic Laws has consistently advocated the repeal of the national maximum speed limit. One of our primary concerns has been and is the compliance system that was put in place to coerce State enforcement of the national maximum speed limit. Ultimately, it is our members and millions of other motorists who are ticketed, fined and inconvenienced when the States initiate enforcement crackdowns.

It is they who have their insurance premiums arbitrarily increased because they were arrested for doing what 80 percent of their fellow motorists were doing on the same day, perhaps on the same highway.

Speed enforcement for the sake of meeting compliance requirements has absolutely nothing to do with highway safety. We believe a very solid argument can be made that these enforcement crusades are, in fact, counterproductive in terms of highway safety, officer/citizen relationships and optimizing the use of enforcement resources.

Because the 55 mile-per-hour national maximum speed limit is universally ignored in the States, the States have been forced to engage in a variety of charades to pretend that there is compliance with this unpopular law.

The first line of defense used by the States and approved by the U.S. Department of Transporation to prevent financial sanctions is the use of speed-monitoring adjustments. These adjustments are based on the unlikely premise that automobile speedometers, speed-monitoring locations and speed-monitoring devices all are in error.

It is assumed all speedometers read slower than the actual speed the vehicle is moving; all monitoring stations are located in such a manner that faster traffic is over-represented in the final totals; and all speed-monitoring devices over-estimate the actual speeds of vehicles passing over them.

By applying the full battery of adjustments, an individual State can reduce its percentage of non-compliance from 68 percent, exceeding 55 miles per hour, to an acceptable 49.9 percent exceeding 55 miles per hour, thus avoiding financial sanctions.

As has been evidenced in recent years, and at this hearing, the use of adjustments has not proven sufficient to protect several States from the potential application of financial sanctions. Consequently, a host of new strategies have been developed to further distort the validity of the national

maximum speed limit compliance reports. These include:

Intensified enforcement in the vicinity of speed-monitoring devices; intensified enforcement during time frames when speeds are specifically being monitored for quarterly compliance reports; rolling road blocks; relocation of monitoring stations to congested highways; relocation of monitoring stations to highways where physical-environmental restraints make it virtually impossible to drive in excess of 55 miles per hour; and the last is raising the speed limit to 55 miles per hour on highways incapable of handling higher speeds and then placing a speed-monitoring device on that highway.

It is another irony that the compliance system has always been biased against States with lower speed limits on their secondary highways. The current controversy concerning the States that have retained the 55 mile-per-hour speed limit is just another manifestation of this bias.

When all secondary roads are posted at 54 miles per hour or less, they are no longer included in the compliance system. This leaves only the limited access divided highways with the 55 mile-per-hour speed limit. It is common knowledge that 70 to 90 percent of the traffic exceeds 55 miles per hour on these highways. Consequently, States with only their Interstate quality roads posted at 55 find it almost impossible to remain in compliance with a national maximum speed limit.

In total, the national maximum speed limit compliance system has resulted in distorted and counterproductive enforcement campaigns, citizen animosity, wasted enforcement resources, misleading statistical information, perverted traffic regulations and deceptive practices on the part of regulatory agencies. Its direct and indirect impact on motorists' driving practices has been negligible to nonexistent.

There are two reasons why the compliance system has so totally failed in concept and in practice. The first is that the law, the 55 mile-per-hour national maximum speed limit it was designed to underpin, is contrary to proven and accepted traffic regulation practices.

Senator BURDICK. You may go ahead. I don't want to turn this into a debate, but if you have a question?

Mr. HANNIGAN. No, I understand this, sir, but I think it is important to get this on the record to clarify a few points. The data that was released in the latter part of last year concerning May, June, and July in the States that raised the speed limit, even the Department of Transportation said that that information should be used with a great degree of descretion.

For example, in California, they told us our fatal accidents on the rural interstates went up 47 percent. They included May, June and July, and they included all the rural interstates in the State. In fact, California only changed a percentage of its rural interstates, but they included all the data from the interstates.

In reality, we changed the speed limit on May 29th and did not get most of the speed limits posted until mid-June. We went back and looked at the data, and our fatals on the rural interstate went up 3 percent, from 61 deaths to 63 deaths.

The issue of speeds going up since we changed on the rural interstate, the 85 percentile speed in California in 1986 was 65.4 miles per hour. In 1987, when the speed limit was changed during maybe a third of the year, it went up to 65.5. However, during the first quarter of this year, our 85 percentile was 64.4.

The claim that raising the speed limits on the rural interstate will bleed over into the urban setting where the speed limit is still 55 has also not been borne out in California.

On our urban freeway system, the average speed in 1986 for the Federal fiscal year 1986 is 55.8; in 1987, it dropped to 55 miles per hour; and for the first quarter of this year, it was 54.5 miles per hour. So the speed is going down; it is not going up. I think the significant issue here is there are a number of people that are not hands on practitioners that purport to be experts in the field, and they are not.

The fact remains that 6 percent of our fatal accidents on the rural interstate system involve the violation of a speed limit, and the majority of those violations are speeds involving unsafe speed for conditions, not a violation of the maximum speed limit.

In a 10-year period in California, we could only show that 2.2 percent of all our fatal accidents in the rural interstate system had anything to do with exceeding the maximum speed limit. The point being here is there is overconcentration of our resources to try and bring about compliance with the 55 miles-an-hour speed limit.

There have been comments here today that more enforcement is needed to do this. We write over one million 55 citations a year, and we make over three million arrests. We cannot defer any more than one-third of our resources to about 14 percent of our problem, because on a statewide basis, only 14 percent of our accidents involve any type of speed violation.

What is killing people, for the most part, is drunk driving in this country. The National Highway Traffic Administration tells us it is 40 percent of the fatalities involve DUI. In California, it is 35 percent. Like I said earlier, I would trade that one million 55 citations for another 100,000 drunk drivers, and I will save a lot more lives, believe me. We are caught up with this continuously crunching numbers and saying, "Write more tickets for 55 and solve the problem."

The 85 percentile is basically what engineers have historically used for establishing a speed limit. Eighty-five percent of the people on the highway will drive at a speed that is reasonable and prudent for the conditions and the vehicle and the roadway.

When you have 85 percent of the people violating that law, you have got a problem, and there is no way enforcement is going to resolve that. If we were to meet the ratio of tickets that are issued in, for example, Maryland, who has an outstanding enforcement program, we would have to write almost five million 55 citations a year. Gentlemen, I purport to you that it is ludicrous. That is a total waste of law enforcement resources.

My job, and I have been in this job for 25 years, is to save lives, not write speeding tickets for 62 miles an hour when it is not killing people.

I just wanted to get that on the record, and Mr. Chairman, I would also hope that you would put my written testimony in the record, too.

Senator BURDICK. It has all been taken.

Mr. O'NEILL. Mr. Chairman, I know we can't have a debate, but I would like to point out that in New Mexico and South Carolina, 24 percent of the motorists are exceeding the safe design speed of the highway, so that throws out the 85th percentile theory right there, because we have already got more than 15 percent of the motorists exceeding the safe design speeds of those highways.

Senator BURDICK. Any other comments before I ask a question?

Mr. BAXTER. Mr. Chairman, I would like something put in the record, not in the debate format, though. A report that has been mentioned today during the hearing is "55, A Decade of Experience" that was written by the Transportation Research Board. I would like pages 200 and 201 put in the record for the benefit of the Committee members.

They discuss the correlation between speed, speed limits and highway safety.

Senator BURDICK. Without objection, they will be received.

By Mr. HARKIN (for himself, Mr. LUGAR, Mr. MELCHER, Mr. BOND, Mr. PRYOR, Mr. BUMPERS, and Mr. DECONCINI):

S. 2551. A bill to provide additional enforcement authority for the Forest Service to deal with the production of controlled substances on the National Forest System, and for other purposes; to the Committee on the Judiciary.

NATIONAL FOREST SYSTEM PUBLIC SAFETY ACT

● Mr. HARKIN. Mr. President, for the past year I have been directing an investigation of elements that threaten the public safety in the national forest. This investigation has been carried out by the Senate Agriculture Subcommittee on Investigations, which I chair.

Just last summer, like millions of other Americans, I took my family to visit some of our national forests. When we came to a restricted area, I thought it was due to wild animals or some other natural hazard. A forest ranger later disabused me of this notion. He explained that it was due to wild humans. About a million acres of national forest were restricted to public access last year due to illegal narcotics activity.

About 1 million plants—8,000 gardens—of commercial grade marijuana were grown in the national forest last year. Almost every national forest in the United States had cultivated marijuana growing in it. Evidence of hard drugs were found as scores and scores of PCP and methamphetamine—speed—labs and opium gardens were found and identified. The Forest Service states that all of the gardens had armed guards; many had attack dogs, booby traps and/or sophisticated detection devices. All employed chemicals such as high potency fertilizers, animal poisons, and toxic wastes, that adversely affect the surrounding ecostructure.

I am not here today to discuss the merits or philosophies involving domestic drug control laws. Nor am I here to address the organizational or governmental structures for dealing with narcotics control. I am here today to talk about the need to protect the public's right to visit and enjoy

our national forests without fear of lethal booby traps; attack by dogs; or assault, abuse and harassment by armed mercenaries. This growing menace not only threatens family campers, but also scout groups, hunters, individual hikers and bird watchers, timber company employees and even Forest Service employees themselves.

I want to relate just a few examples of the types of problems we're dealing with here. Several hunters in Arkansas were seriously and permanently injured when they unwittingly triggered a land mine designed to protect a marijuana garden against intruders. A Forest Service biologist was repeatedly shot at and nearly killed when checking a stream that ran close to a marijuana garden. Even her clearly marked Forest Service vehicle was shot up. Other Forest Service employees have been shot while in the performance of their duties. Several instances exist of shootings and even murders in the forests over drugs. Forest fires were started last year by competing marijuana growers. Intentional damage to property owned by alleged informants is more common. Incidents of physical abuse, threats and intimidation are too numerous to note here.

These circumstances inhibit the public's right to free and open access to public lands. They drain the Federal Treasury of anticipated royalties when timber contracts are rendered unenforceable by the presence and activities of pot growers and other criminal elements. Worst of all they leave permanent scars and threaten the lives of people who innocently and unwittingly cross paths with these criminal elements.

This bill I am introducing today with the bipartisan support of my colleagues, Senators LUGAR, MELCHER, PRYOR, BOND, DECONCINI, and BUMPERS, will not cost the Federal Government any money. In fact it may increase the receipt of timber royalities and other user fees associated with the National Forest System. It will greatly improve the efficiency of our public land management agencies and protect both the public and our public lands against illegal acts of violence. Our bill will do the following:

Increase the authority of Forest Service law enforcement personnel, for crimes committed within the National Forests, to a level comparable to other Federal land management agencies—such as Bureau of Land Management and U.S. Park Service. I want to point out that this bill does not in any way detract from the Justice Department's responsibilities as the lead agency for narcotics control.

Increase the penalties for injuring or attempting to injure unsuspecting persons through the placement of booby traps and other injurious devices.

Increase the level of cooperation between the Forest Service and other public land management agencies and the Justice Department.

This bill enjoys the bipartisan support of both the Subcommittee on Investigations and Subcommittee on Forestry and has been reviewed by the U.S. Department of Agriculture. I invite my colleagues to join me in cosponsoring this bill.●

● Mr. BOND. Mr. President, as my colleague from Iowa, Senator HARKIN, has so ably described, we once again have a major drug problem in this country that we must address.

So often, we hear about the war on drugs in the city streets of our Nation. But this war isn't limited to our cities—it has spread like a cancer and polluted one of our most precious resources—our national forests.

Our national forests have always been one of the most valued treasures of our Nation. For years, our forests have provided a retreat for millions of Americans—a place where they can enjoy a brief therapeutic reprieve from what has become urban America. However, in many of our national forests, this is no longer the case.

The battlefield for our Nation's ongoing battle with drugs has spread at an alarming rate from our cities to our national forests. More and more visitors are becoming apprehensive about merely driving through forest areas—and justly so. As enforcement in urban areas has increased, including recent changes allowing the seizure of marijuana growers' personal assets, many marijuana growers have moved their crop production to the land of our national forests. The existence of these marijuana tracts has obviously led to threatening surveillance by the growers. Some 400 incidents of assault or intimidation are reported annually involving these growers. Among these incidents, armed growers, watchdogs of the Doberman and Pit Bull species, and booby traps are all included. To give you an idea of the violence of these people:

In 1983, two Forest Service officers were ambushed and shot in Arkansas as they left a marijuana surveillance area.

In 1986, a house was burned by growers after the owner had reported marijuana on the national forest in Suches, GA.

In 1986, a booby trap was triggered and exploded by two hunters in Arkansas, seriously injuring one of them.

Mr. President, the list goes on and on and grows as we speak. This reality is a problem that must be dealt with. The solution lies in increased arrests, thorough investigations, aggressive prosecutions and sentences that clearly establish a deterrent to this crime. The solution must enable Forest Service officers to exercise their investigative authority outside the boundaries of the National Forest System. The solution does not lie within the resources or capability of any single agency—rather, all agencies, Federal, State, and local must cooperate to successfully rally a campaign to eliminate this cancer from our national forests.

The legislation we are proposing today effectively accomplishes these objectives. Our bill will eliminate the marijuana grower's ability to utilize forest boundaries to evade national forest officers and it will most certainly provide a strong deterrent for those marijuana growers who abuse our forests. Assault and intimidation, which takes place almost daily in our national forests, will most definitely decrease when these offenders realize the stiff penalties that will now be imposed.

Mr. President, we have the opportunity to recapture the peaceful serenity of our forests if we act fast. I believe this bill provides the needed resources to take a giant step toward eliminating marijuana production in our national forests. It is for these reasons that I urge my colleagues to support this much needed legislation and I would hope that we could pass it expeditiously.●

ADDITIONAL COSPONSORS

S. 10

At the request of Mr. CRANSTON, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 10, a bill to amend the Public Health Service Act to improve emergency medical service and trauma care, and for other purposes.

S. 39

At the request of Mr. MOYNIHAN, the names of the Senator from Maryland [Mr. SARBANES], the Senator from Nevada [Mr. HECHT], and the Senator from Montana [Mr. MELCHER] were added as cosponsors of S. 39, a bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance permanent.

S. 464

At the request of Mr. CRANSTON, the names of the Senator from Maryland [Ms. MIKULSKI], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of S. 464, a bill to prohibit discrimination on the basis of affectional or sexual orientation, and for other purposes.

S. 1673

At the request of Mr. CHAFEE, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 1673, a bill to amend title XIX of the Social Security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

S. 1727

At the request of Mr. HARKIN, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 1727, a bill to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders.

S. 1851

At the request of Mr. METZENBAUM, the names of the Senator from Montana [Mr. MELCHER], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Connecticut [Mr. WEICKER] were added as cosponsors of S. 1851, a bill to implement the International Convention on the Prevention and Punishment of Genocide.

S. 2149

At the request of Mr. MITCHELL, the name of the Senator from Montana [Mr. MELCHER] was added as a cosponsor of S. 2149, a bill to amend the Internal Revenue Code of 1986 to allow State secondary markets of student loan notes to continue serving the educational needs of postsecondary students and the Nation.

S. 2176

At the request of Mr. DIXON, the names of the Senator from North Carolina [Mr. HELMS], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2176, a bill to amend the Internal Revenue Code of 1986 to permit the tax-free purchase of motor fuels by individuals who are exempt from paying the motor fuels excise tax, and for other purposes.

S. 2213

At the request of Mr. GORE, the names of the Senator from North Carolina [Mr. SANFORD], and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of S. 2213, a bill to amend the Federal Trade Commission Act to strengthen the authority of the Federal Trade Commission respecting fraud committed in connection with sales made with a telephone.

S. 2411

At the request of Mr. MITCHELL, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2411, a bill to amend the Internal Revenue Code of 1986 to extend the low-income housing credit through 1990.

S. 2428

At the request of Mr. BOSCHWITZ, the names of the Senator from Alaska [Mr. STEVENS] and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of S. 2428, a bill to amend title VII of the Civil Rights Act of 1964 to prohibit discrimination based on race, color, religion, sex, handicap, national origin, or age in employment in the legislative or judicial branches of the Federal Government; and to establish the Employment Review Board composed of senior Federal judges, which shall have authority to adjudicate claims regarding such discrimination.

S. 2454

At the request of Mr. BOSCHWITZ, the name of the Senator from Alaska [Mr. MURKOSKI] was added as a cosponsor of S. 2454, a bill to seek the eradication of the worst aspects of poverty in developing countries by the year 2000.

At the request of Mr. HARKIN, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from California [Mr. CRANSTON], the Senator from South Dakota [Mr. DASCHLE], the Senator from Vermont [Mr. LEAHY], the Senator from Nebraska [Mr. EXON], the Senator from Michigan [Mr. LEVIN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Colorado [Mr. WIRTH], and the Senator from Washington [Mr. ADAMS] were added as cosponsors of S. 2454, supra.

S. 2462

At the request of Mr. CRANSTON, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 2462, a bill to amend title 38, United States Code, to improve various aspects of Veterans' Administration health-care programs, to provide certain new categories of veterans with eligibility for readjustment counseling from the Veterans' Administration, to extend the authorizations of appropriations for certain grant programs and to revise certain provisions regarding such programs, to revise certain provisions relating to the personnel system of the department of Medicine and Surgery, and for other purposes.

S. 2527

At the request of Mr. METZENBAUM, the names of the Senator from New Jersey [Mr. BRADLEY] and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 2527, a bill to require advance notification of plant closings and mass layoffs, and for other purposes.

S. 2528

At the request of Mr. METZENBAUM, the names of the Senator from New Jersey [Mr. BRADLEY] and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 2528, a bill to require advance notification of plant closings and mass layoffs, and for other purposes.

S. 2539

At the request of Mr. BURDICK, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 2539, a bill to amend the Agricultural Act of 1969 to provide drought relief to producers of 1988 crops of wheat, feed grains, upland cotton, and for other purposes.

SENATE JOINT RESOLUTION 149

At the request of Mr. HELMS, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from North Carolina [Mr. SANFORD], and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of Senate Joint Resolution 149, a joint resolution to designate the period commencing on June 21, 1989, and ending on June 28, 1989, as "Food Science and Technology Week".

SENATE JOINT RESOLUTION 272

At the request of Mr. DURENBERGER, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Joint Resolution 272, a joint resolution to designate November 1988 as "National Diabetes Month".

SENATE JOINT RESOLUTION 273

At the request of Mr. LUGAR, the names of the Senator from Florida [Mr. GRAHAM] and the Senator from Delaware [Mr. ROTH] were added as cosponsors of Senate Joint Resolution 273, a joint resolution designating October 6, 1988, as "German-American Day."

SENATE JOINT RESOLUTION 304

At the request of Mr. LAUTENBERG, the names of the Senator from Alabama [Mr. SHELBY], the Senator from Mississippi [Mr. STENNIS], the Senator from Arkansas [Mr. BUMPERS], the Senator from Michigan [Mr. LEVIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from California [Mr. CRANSTON], the Senator from Washington [Mr. ADAMS], the Senator from Alaska [Mr. STEVENS], the Senator from New York [Mr. D'AMATO], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of Senate Joint Resolution 304, a joint resolution designating July 2, 1988, as "National Literacy Day."

SENATE JOINT RESOLUTION 314

At the request of Mr. BOSCHWITZ, the names of the Senator from Indiana [Mr. QUAYLE], the Senator from Alabama [Mr. HEFLIN], and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of Senate Joint Resolution 314, a joint resolution designating October 1988 as "Pregnancy and Infant Loss Awareness Month."

SENATE JOINT RESOLUTION 319

At the request of Mr. LEAHY, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Joint Resolution 319, a joint resolution to designate the period commencing November 6, 1988, and ending November 12, 1988, as "National Disabled Americans Week."

SENATE JOINT RESOLUTION 321

At the request of Mr. BRADLEY, the names of the Senator from Alabama [Mr. HEFLIN] and the Senator from

Arkansas [Mr. BUMPERS] were added as cosponsors of Senate Joint Resolution 321, a joint resolution to designate the period commencing February 19, 1989, and ending February 25, 1989, as "National Visiting Nurse Associations Week."

SENATE CONCURRENT RESOLUTION 103

At the request of Mr. DECONCINI, the names of the Senator from Colorado [Mr. ARMSTRONG], the Senator from Massachusetts [Mr. KERRY], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of Senate Concurrent Resolution 103, a concurrent resolution expressing the sense of the Congress that the President should award the Presidential Medal of Freedom to Charles E. Thornton, Lee Shapiro, and Jim Lindelof, citizens of the United States who were killed in Afghanistan.

SENATE RESOLUTION 442

At the request of Mr. TRIBLE, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Delaware [Mr. ROTH], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of Senate Resolution 442, a resolution expressing the sense of the Senate that the President should convene an International Conference on Combatting Illegal Drug Production, Trafficking, and Use in the Western Hemisphere.

AMENDMENT NO. 2379

At the request of Mr. BAUCUS, the names of the Senator from Montana [Mr. MELCHER], the Senator from Washington [Mr. ADAMS], the Senator from North Dakota [Mr. BURDICK], the Senator from North Dakota [Mr. CONRAD], the Senator from South Dakota [Mr. DASCHLE], the Senator from Washington [Mr. EVANS], the Senator from Idaho [Mr. MCCLURE], the Senator from South Dakota [Mr. PRESSLER], the Senator from Wyoming [Mr. SIMPSON], the Senator from Idaho [Mr. SYMMS], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of amendment No. 2379 proposed to H.R. 3251, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the United States Congress.

SENATE RESOLUTION 444—RELATIVE TO THE TAX OFFSET PROGRAM

Mr. QUAYLE (for himself, Mr. PELL, Mr. KENNEDY, Mr. STAFFORD, and Mr. DODD) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 444

Whereas the Senate finds that the Internal Revenue Service program to offset tax refunds against individuals who owe the Federal Government money has been remarkably effective;

Whereas $400,000,000 is anticipated to be raised by the offset program this year;

Whereas the most effective offset program, returning $213,000,000 in 1987, has been for defaulted student loans;

Whereas the publicity from the offset program has resulted in $30,000,000 being paid by student loan defaulters;

Whereas the Department of Education, which incurred default costs of $1,600,000,000 in 1988 and is projected to incur costs of $2,000,000,000 in 1990, expects that the Internal Revenue Service tax offset program will continue to be an effective means of recovering defaulted student loans;

Whereas the authority for the Internal Revenue Service tax offset program expires on July 1, 1988, and Federal departments such as the Department of Education will be unable to prepare files to be sent to the IRS at the end of the year;

Whereas each Federal department which cannot prepare files this summer will lose a year of offset: Therefore, be it

Resolved, That it is the sense of the Senate that the Internal Revenue Service tax offset program should be reauthorized as soon as possible so that the Federal Government can continue to collect the anticipated recovery of $400,000,000 resulting from offsets in 1988, and further, that the tax offset program be permanently authorized.

SENATE RESOLUTION 445—RELATIVE TO THE 40TH ANNIVERSARY OF THE CABLE TELEVISION INDUSTRY

Mr. HEINZ (for himself and Mr. SPECTER) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 445

Whereas, 1988 marks the 40th anniversary of the birth of the Cable Television Industry;

Whereas, the Industry was founded in the valleys of Northeastern Pennsylvania;

Whereas, the Cable Television Industry has served to educate, inform, entertain, and enrich the citizens of the United States;

Whereas, the Cable Television Industry has created thousands of jobs and generated millions of dollars in revenues for local municipalities;

Whereas, through government access and community access programming, and through the Cable Television Industry's support of the programming of the Cable Satellite Public Affairs Network (C-Span), the Cable Television Industry has served to educate the citizens of America as to the workings of government;

Whereas, the Cable Television Industry has helped to shape America's cultural landscape by presenting news, sports, weather, and cultural programming on a round-the-clock basis: Now, therefore, be it

Resolved by the Senate, That it is the sense of the Senate that the Cable Television Industry be honored on the occassion of its 40th anniversary and that the Industry be recognized for its continuing dedication to improving the quality of communication services in the United States of America.

Mr. HEINZ. Mr President, I rise today to submit a resolution honoring the cable television industry on its 40th birthday. I would like to take this opportunity to relate a story of cable television's modest beginnings in the United States.

In 1948, John Walson owned an appliance business in Mahanoy City, Schuylkill County PA, then a 3,000-home community 70 miles northwest of Philadelphia and tucked in between two mountain ranges. The town's valley location rendered television reception nearly impossible, and Walson was having some difficulty selling a line of television sets he had added to his merchandise. In order to demonstrate the sets, Walson was forced to drive potential customers onto a nearby mountain top where three Philadelphia stations were accessible. One evening, Walson set out to transport a curious couple up the mountain for a demonstration. When the husband declared that he was just too tired to make the trip, the angry wife continued on with Walson, determined to make her husband jealous in the process. Whether or not her efforts had any impact on the lazy husband, Walson was sufficiently embarrassed that the next day he set out to run a twin lead, army surplus cable from his store to the nearest hilltop.

Soon neighbors, impressed with the fine reception of the Philadelphia stations displayed on three televisions in Walson's store window, agreed to purchase sets from Walson if the cable was extended to their homes. As the arrangement gained popularity throughout the town, Walson obtained permission from the Pennsylvania Power & Light Co. to run his cable along their poles, and eventually charged customers for the service.

From this unlikely start, sparked by a jealous husband, cable television has expanded from a business for this small town entrepreneur in to a multi-billion-dollar enterprise. With 80 percent of American homes now able to access cable television and with more than 50 percent of America's television owning households subscribing to the service, there is no doubt that cable television has helped weave the very fabric of our society.

I urge my colleagues to join me in wishing cable television a very happy 40th birthday by supporting this resolution.

AMENDMENTS SUBMITTED

TENDER OFFER DISCLOSURE AND FAIRNESS ACT

SHELBY (AND ARMSTRONG) AMENDMENT NO. 2413

(Ordered to lie on the table.)

Mr. SHELBY (for himself and Mr. ARMSTRONG) submitted an amendment intended to be proposed by them to the bill (S. 1323) to amend the Securities Exchange Act of 1934 to provide

to shareholders more effective and fuller disclosure and greater fairness with respect to accumulations of stock and the conduct of tender offers; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . REQUIREMENT OF EQUAL SHAREHOLDER VOTING.

(a) IN GENERAL.—Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) is amended by adding at the end thereof the following new subsection:

"(m)(1) Except as provided in paragraph (2), a security (other than an exempted security) of an issuer may not be registered on a national securities exchange, or be authorized for quotation on an interdealer quotation system operated by a registered national securities association, if—

"(A) on or after July 1, 1988, the issuer takes any action to cause such security to have fewer or greater than one vote per share on any issue to come before such issuer's shareholders (disregarding any right of such shareholders with respect to cumulative voting in an election of directors); or

"(B) such security is a common stock that is without voting rights.

"(2) The prohibitions contained in paragraph (1) with respect to registration and authorization for quotation shall not apply to any security if—

"(A) such security is issued in an initial public offering in which the market capitalization of the issuer does not exceed $20,000,000;

"(B)(i) such security is issued as part of a merger, acquisition, consolidation, or stock dividend, approved by the shareholders of the issuer, and

"(ii) the per share voting rights of such securities is not greater than or less than the voting rights of the issuer's outstanding voting securities; or

"(C) such security is a security described in paragraph (3).

"(3) A security is described in this paragraph, if—

"(A) such security was of a class which was authorized for issuance before July 1, 1988, and is either—

"(i) a security with fewer or greater than one vote per share (as described in paragraph (1)(A)), or

"(ii) a common stock without voting rights; or

"(B) such security is an additional issuance of a security described in subparagraph (A).

"(4) The Commission may adopt such rules, regulations, and orders as may be necessary or appropriate in the public interest or for the protection of investors—

"(A) to implement the provisions of this subsection;

"(B) to define any term used in this subsection;

"(C) to exempt any person or transaction or class of persons or transactions, as not comprehended within the purposes of this subsection, in whole or in part, either unconditionally or upon specific terms and conditions; or

"(D) to prescribe means reasonably designed to prevent any person from evading or circumventing the provisions of this subsection.

"(5) For purposes of this subsection:

"(A) The term 'voting securities' includes all equity securities with voting rights on any matter which may come before the issuers' stockholders, but does not include any security which is accorded voting rights only upon the event of a default or other circumstances which jeopardize the issuer's ability to meet its obligations to the holders of that security.

"(B) The term 'common stock' includes all equity securities with a residual interest in the issuer's assets, except equity securities which carry a fixed rate of return and no additional right to participate in the earnings of the issuer.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date which is 60 days after the date of enactment of this Act.

RETAIL COMPETITION

DECONCINI AMENDMENT NO. 2414

(Ordered to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to the bill (S. 430) to amend the Sherman Act regarding retail competition; as follows:

At the appropriate place insert:

Section . In applying the rule of reason standard to exclusive territorial agreement between a manufacturer and one of its distributors that grants the distributor the sole and exclusive right to distribute and to sell the manufacturer's products in any defined geographic area, no liability under the antitrust laws shall be found where the product that is the subject of the exclusive territorial agreement is in substantial and effective competition with other products in the relevant product and geographic markets. Nothing in this Section shall be construed to legalize the enforcement of price-fixing agreements, horizontal restraints of trade, or group boycotts, if such agreement, restraints, or boycotts would otherwise be unlawful.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on June 21, 1988, to hold a hearing on judicial nominations.

The PRESIDING OFFICER. Without objection, it is ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs, be authorized to meet during the session of the Senate on Tuesday, June 21, 1988, to hold a hearing on S. 2382, a bill to delay implementation of a certain rule affecting the provision of health services by the Indian Health Service.

The PRESIDING OFFICER. Without objection, it is ordered.

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, be authorized to meet during the session of the Senate on June 21, 1988, to hold a hearing on S. 473, Aviation Accident Liability.

The PRESIDING OFFICER. Without objection, it is ordered.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Senate Energy Committee be authorized to meet during the session of the Senate on June 21, 1988, to conduct a hearing on S. 2055, a bill to designate certain National Forest System lands in the State of Idaho for inclusion in the National Wilderness Preservation System, to prescribe certain management formulae for certain National Forest System lands, and to release other forest lands for multiple-use management, and for other purposes.

The PRESIDING OFFICER. Without objection, it is ordered.

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Tuesday, June 21, to conduct a markup of legislation concerning ocean dumping of sewage sludge (S. 2030) and legislation providing for development of regional marine research programs (S. 2068).

The PRESIDING OFFICER. Without objection, it is ordered.

SUBCOMMITTEE ON THE CONSTITUTION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution of the Committee on the Judiciary, be authorized to meet during the session of the Senate on June 21, 1988, to hold a hearing on S. 702, a bill to provide for the collection of data about crimes motivated by racial, religious, or ethnic hatred, S. 797, a bill to require the Attorney General to collect data and report annually about hate crimes, and S. 2000 a bill to provide for the acquisition and publication of data about crimes that manifest prejudice based on race, religion, affectional or sexual orientation, or ethnicity.

The PRESIDING OFFICER. Without objection, it is ordered.

ADDITIONAL STATEMENTS

J. LEWEY CARAWAY

● Mr. PRYOR. Mr. President, I am pleased and privileged to recognize today the long and remarkable contribution made to the U.S. Senate by J. Lewey Caraway, who recently retired as Superintendent of Senate Office Buildings.

Lewey Caraway has personally cared for and protected the institution of the Senate. And in the nearly 60 years he spent here Lewey Caraway has become an institution himself.

He has not only been a model public servant and an example for all Federal employees to follow. He is also a native of my State of Arkansas.

Both Lewey's uncle and his aunt, Thaddeus Caraway and his wife Hattie, served in the Senate during the 1920's and 1930's. In fact, Hattie Caraway was the first woman elected to the Senate.

That was in 1932, and Lewey Caraway had begun his years of service to the Senate only the year before. He went on to become Superintendent in October 1949 and his service has been continuous since that time.

Mr. President, anyone who has served in the Senate during the past 40 years knows that Lewey Caraway is the man to know if you want to get something done. He is always efficient and prompt, always willing to assist, always responsive to the needs of any member of this body.

Lewey Caraway is a man of few words, a man who keeps his own counsel. But when he speaks you know his word is good. We will miss him in the Senate.●

TRIBUTE TO GLADYS NOON SPELLMAN

●Ms. MIKULSKI. Mr. President, I rise to mark the passing yesterday of a distinguished legislator, extraordinary public servant, and dear friend.

Few Members of Congress have been as well loved by their constituents, or as effective in serving their districts, as Gladys Noon Spellman.

A three-term Congresswoman from Prince Georges County, she was more than just another popular politician.

She was a smart, tough, and compassionate legislator who knew how to get things done. And she helped smooth the way for other women, including myself, who followed her into politics.

To me she was like a big sister and a friend. When I first came to Congress in 1976, it was Gladys Spellman who gave me a desk and a phone in her suite before I had an office of my own to move into, and from whom I learned about how best to serve our Maryland constituents. She was great to me, and she did the same for other women along the way, too.

Constituent service was always on the top of her list. She knew all about the national issues Congress had to deal with. But first and foremost she was concerned about meeting the day-to-day needs of Marylanders.

And she knew how to convert those needs into policy. She made sure the potholes were paved and the Social Security checks were in the mail.

She will always be remembered for her efforts to make long-needed improvements to the Baltimore-Washington Parkway. Those efforts were recognized in 1982 when the U.S. Congress and Maryland Legislature renamed the parkway in her honor.

That was not all she did however. As chair of an important subcommittee of the House Post Office and Civil Service Committee, she made sure Federal workers got the pay compensation and working conditions they needed to do their jobs right.

She played a key role in safeguarding the Federal retirement system. She also worked to get the funding necessary to get Washington's Metro System underway.

Gladys Spellman got her start in politics like I did—working her way up from the grassroots. I was a social worker. She was an elementary school teacher. She organized in the PTA and as a civic association activist.

In 1962 she was elected as part of the local reform movement to serve on the Board of the Prince Georges County Commissioners. She soon became chairman of the commission, and then served on the first Prince Georges County Council. Mrs. Spellman ran successfully for Congress in 1974.

She was one of the most popular politicians Maryland has seen. The whole State misses her cheerful personality and legislative abilities. I know I do. My condolences go to her husband, Reuben, her three children, and four grandchildren.●

BISHOP ROBERT JOYCE

● Mr. LEAHY. Mr. President, literally throughout my lifetime, I have had the joy and honor of knowing Bishop Robert Joyce of Vermont. My parents, Howard and Alba Leahy, first became acquainted with Bishop Joyce when he was a young priest in Northfield, VT. Even as a child, I remember my parents telling me how much their association with him during that time meant to them. As a child growing up in Montpelier, I remember this tall, dignified figure walking down the streets of Montpelier, greeting dozens of people by name. Later, as a student at St. Michael's College, I would see the bishop doing the same thing on the streets of Burlington, and I was honored to receive my college diploma from him.

Throughout my adult life, both in a private capacity and in a public capacity, I cherished the friendship with this amazing person. I know why my parents, my wife's parents, and so many thousands of other Vermonters consider him a close, dear friend. Marcelle and I have joined with so many others in congratulating him upon the 65th anniversary of his ordination to the priesthood, and I would ask that an article about him, which appeared in the Barre Montpelier Times Argus on May 28, 1988, be printed in the RECORD at this point.

[From the Barre Montpelier Times Argus, May 28, 1988]

BISHOP JOYCE MARKS 65 YEARS IN CHURCH WORK

BURLINGTON.—Bishop Robert Francis Joyce has the distinction of serving the Catholic Church for 65 years.

Although retired, he resides at St. Joseph's Home in Burlington and, at age 91 still concelebrates Mass daily, continuing his ministry through prayer. He corresponds with the elderly, the housebound and invalids throughout the country as well as by telephone within his immediate area. Hospital and nursing home personnel honor his requests to speak with their patients by phone.

For the first 10 years of his retirement, Bishop Joyce worked a half year in Florida as a parish curate and doing confirmation for the archibishop. In the summer, he did parish work on weekends, mainly at the Holy Family Parish in Essex Junction.

According to Bishop Joyce in an interview conducted by a member of the *Catholic Tribune*, he said, "These 65 years have been most blessed and happy ones and I am grateful to God that while at the University of Vermont I found my true vocation. It has been a privilege to serve as a priest of the church over all these years, to have administered the sacraments to uncounted thousands of people and to have preached the gospel to many more because of taking part in celebrations and dinners and conventions." According to Bishop Joyce, among his greatest of privileges was that of having ordained two bishops. Bishop John Marshal, as his last act as Bishop of Burlington, and ordaining a Vermont native. Bishop Louis Gelineau, as bishop of Providence, R.I.

On May 26, 1923, in the Cathedral of the Immaculate Conception in Burlington, Robert Francis Joyce, a native of Proctor, was ordained to priesthood. The son of Patrick and Nellie (Connor) Joyce, he graduated from Proctor High School, one of nine in his class, and continued studying at the University of Vermont, where he pursued his love of chemistry, math and the sciences. After two years of college he decided that being in a laboratory was not where he really wanted to be.

Working during the summer of 1915 as a handy-man in Burlington for Dr. Harry Perkins, he had the opportunity to view Dr. Perkins' neighbor, Bishop Joseph J. Rice, walking on his porch while reading his breviary. The vision of Bishop Rice remained with Joyce. Consideration, or a calling of the priesthood, constantly recurred. While in his third year of college, Father Hugh McKenna, from Providence, R.I., suggested that the young man give serious thought to a religious vocation. With encouragement from Father McKenna and his mother's blessings, Joyce furthered his studies at the Grand Seminary in Montreal, graduated with highest honors and was ordained by Bishop Rice.

Throughout his 65 years of ministry, Joyce served in various capacities; first at St. Michael Parish in Brattleboro, St. Francis de Sales Parish in Bennington, St. Paul's Church in Manchester, and became principal of Cathedral High School in 1927. A later assignment was as pastor of St. John's

Catholic Church in Northfield, where he remained for 11 years.

In 1943, he volunteered as a chaplain serving with the U.S. Army assigned to the 103rd General Hospital in England. Prior to the end of World War II, Bishop Joyce's last year in the military was spent in the southern United States, where he learned to love and respect the people of that region.

He served St. Peter Parish in Rutland from 1946 until June 1954, when he was asked to serve as auxiliary bishop of Vermont to Bishop Edward F. Ryan with the titular See of Citium by Pope Pius XII. Bishop Joyce was installed as the sixth bishop of the Diocese of Burlington three years later, when Bishop Ryan died.

Assuming the role as head of Vermont Catholics, Joyce participated in the rapid changes taking place within the church and attended all of the four sessions of the Second Vatican Council during 1962 and 1965. Joyce has stated that being part of the Ecumenical Council of the Church was among the crowning features of the events in his life.

He visited his parishes in the central Vermont area often during his 15 years as bishop. He liked people and it showed. His easy manner and quick smile earned him many friends throughout the state; those of little or no faith, Protestants and Jews, and many of various faiths.

Mr. President, no person epitomizes the sense of integrity and dedication that Vermont is known for than Bishop Joyce. I join with his friends of all faiths in applauding him and thanking him for all he has done for our State. I, also, as a Catholic, admire him for all he has done to lead our church in Vermont.●

THE 200TH ANNIVERSARY OF NEW HAMPSHIRE RATIFYING THE U.S. CONSTITUTION

● Mr. HUMPHREY. Mr. President, on Wednesday morning June 18, 1788, horses were tied in front of the steepled meeting house in the north end of Concord, NH, and the streets were buzzing with anticipation of the day's events. From every part of the Granite State delegates had come to the State capital to debate the ratification of the proposed Federal Constitution. The atmosphere was charged with excitement and tension, for eight States of the necessary nine had already voted to ratify, and should New Hampshire decide for ratification her action would signal the start of a new age for the American people, under the Government of the Constitution of the United States of America.

Led by Josiah Bartlett, a signer of the Declaration of Independence, Gen. John Sullivan, who shared the long winter at Valley Forge with Washington, John Langdon, the State president, and Samuel Livermore, the Chief Justice, the delegates entered the meeting house. The outcome was by no means assured, but at the close of their deliberations, 200 years ago today, by a narrow majority vote of 57 to 47, New Hampshire became the ninth and deciding State to ratify the U.S. Constitution.

New Hampshire State Senator Ebenezer Webster, whose son, Daniel, would one day serve in the Senate of the United States, spoke eloquently for ratification. He said "Mr. President, I have listened to the argument for and against the Constitution. I am convinced that such a government as that Constitution will establish, a government acting directly on the people of the States, if adopted is necessary for the common defense and the general welfare. It is the only government which we owe for the revolution, and which we are bound in honor fully and fairly to discharge."

New Hampshire's role in cementing the foundations of this great country formally began on January 5, 1776, when the Granite State became the first of the Thirteen Colonies to adopt a State constitution dedicated to popular control of a limited government. Two years later, in June 1778, the Nation's first constitutional convention convened in Concord, when 74 delegates representing 90 towns met to frame a more extensive State constitution and submit it to popular vote.

The New Hampshire Constitution which resulted from that convention was remarkable in that it included a list of protected rights of the people, known as "the rights of conscience," a revolutionary concept in a world that accepted the divine right of kings. The framers put it thusly: "The Bill of Rights contains the essential principles of the Constitution. It is the foundation on which the whole political fabric is reared, and is consequently, a most important part thereof. We have endeavored to define the most important and essential natural rights of men. We have distinguished betwixt the alienable and unalienable rights: for the former of which, men may receive and equivalent; for the latter, or the rights of conscience, they can receive none: the world itself being wholly inadequate to the purchase."

With that background the New Hampshire delegates gathered at the meeting house beneath the steeple to debate the U.S. Constitution. Although they were wary of government from the past abuses of the crown, 200 years ago today the U.S. Constitution was ratified in New Hampshire, but only, as past experience had dictated, on the condition that a bill of rights be added to the Federal document to protect the liberty of citizens, regardless of their political beliefs or economic and social status.

Mr. President, a farmer, Jonathan Smith, spoke for New Hampshire when he said "I am a plain man and get my living by the plough. I am not used to speaking in public, but I beg your leave to say a few words to my fellow plough-joggers. I have known good government by the want of it. When I saw the Constitution, I found that it was the cure for these disorders. I don't think the worse of the Constitution because lawyers, men of learning and moneyed men are fond of it. We must all sink or swim together."

Mr. President, today in New Hampshire we celebrate the event which breathed life into the Constitution. We honor the vision and boldness of those who met in Concord that day. And we give thanks for all of those men and women who in the years since have sacrificed to honor and defend our precious Constitution.●

THE BROTHERS LYNN

● Mr. LEAHY. Mr. President, a few short years ago, the St. Albans Messenger, a newspaper in my home State, was losing circulation and advertising and was generally regarded as a negative impact on this northwestern Vermont community.

Emerson and Cynthia Lynn rescued this paper out from under the ownership of William Loeb newspapers, whose flagship paper is the Manchester Union Leader in New Hampshire.

It took the Lynns 3 years to show a profit and overcome community aversion toward the former owner. The Lynns have built a community newspaper that has been instrumental in promoting a growing and more prosperous St. Albans—already blessed by its location on the shores of beautiful Lake Champlain.

The Lynn story does not end there however. Angelo Lynn, Emerson's brother, purchased the Addison Independent, and has turned that weekly newspaper into an aggressive journal that is keeping government accountable in this part of the State.

The brothers have just added another weekly in Chittenden County to their holdings.

Mr. President, the decision of Emerson and Angelo—two natives of Kansas—to locate in Vermont, has introduced a new and welcome brand of journalism to Vermont.

Senator NANCY KASSEBAUM lost a press secretary, but St. Albans got a newspaper, when Emerson moved his family to Vermont.

The Lynns, by their own admission, are not yet close to being a newspaper dynasty in our State. But they are committed to giving the people of Franklin and Addison Counties the information they need to go about their lives.

Mr. President, I ask that this article about the brothers Lynn which appeared in the Vermont Sunday magazine supplement of the Rutland Herald of June 5, 1988, be reprinted in its entirety so others can read about this Vermont newspaper family.

The article follows:

THE BROTHERS LYNN

They make a good team in the two-man triathions they both enjoy, Emerson Lynn is the runner. Angelo Lynn takes over for the biking leg, and they canoe together.

The parallel to their professional lives is obvious. Emerson and his wife, Cynthia, took over as co-publishers of the St. Albans Messenger in 1981. Angelo and his wife, Sarah, followed them to Vermont in 1984, buying the Addison County Independent—a newspaper, by the way, that had once been offered to Emerson and Cynthia.

This month—on the canoe leg of the trip—the Brothers Lynn will become the new owners of the Essex Reporter, a small-circulation weekly that covers IBM country.

This latest venture has more than a few people asking whether the Lynns, with newspapers to the north, south and east of Burlington, are preparing a frontal assault on the Chittenden County media market, on the Burlington Free Press in particular.

The brothers say no. "It's so small," says Angelo Lynn, "that it (the Essex Reporter) could never be a threat to the Free Press. We're not in a position to be interested in the Burlington market."

Still, these are the sons, grandsons and great-grandsons of a newspaper family. The Iola (Kan.) Register, a six-day-a-week daily newspaper, was bought by their great-grandfather in 1882. The Register was taken over by their grandfather and later their father, Emerson E. Lynn, Jr., the current publisher.

They grew up in an apartment over the presses of a small weekly published by their father. Angelo remembers hearing the presses run every Wednesday night, stuffing inserts into papers when he was barely tall enough to reach the counter tops.

The brothers grew up in Texas, the next stop on their father's journalism career, then graduated with degrees in journalism from the William Allen White School of Journalism at the University of Kansas.

It's enough to conjure visions of William Randolph Hearst at San Simeon.

"Call it the Lynn Dynasty," jokes an Addison County Independent staff member. "Better yet, call it a newspaper chain. That'll really cork him."

"We're not the Lynn newspaper empire," shrugs Angelo. "We're just two brothers, with not a lot of money."

That you need to know from the outset is that St. Albans has changed. A lot. In the old days, St. Albans, the county seat of Franklin County, was a railroad town, populated by conservative Democrats—Democrats because they were union members, conservative because they were Irish and French-Canadian Catholics.

The area—which also includes the towns of Georgia, Sheldon, Fairfield, Highgate, Swanton and Fairfax—is much changed. It's not that the conservative Democrats are gone, but many of them are aging. People are moving from Chittenden County to Franklin County where housing prices still look like a bargain. A recent survey shows that 4,000 St. Albans-area residents now commute to jobs in Burlington.

Economically, dairy was—and is—the major industry in Franklin County. The railroads, which reached their nadir more than a decade ago, are making a comeback, and Central Vermont Railway still pays the highest wages in town. But there is competition for the work force now from companies that have relocated or opened branch offices, some from Chittenden County and some from Montreal.

"St. Albans is pluralistic," notes Emerson Lynn. "It's an equal mix of conservative and liberal. The new people coming in are giving the town some needed energy and new ideas."

For 40 years, this was Loeb-land. The St. Albans Messenger was the first newspaper owned by the late William Loeb, the vitriolic voice of the right wing, who later gained notoriety as the publisher of the Manchester (N.H.) Union Leader. In his newspaper, Loeb pursued a policy of destructive criticism. Even in absentia, Loeb would write his acerbic editorials in his New Hampshire office and mail them to St. Albans.

"Loeb spent 40 years tearing things down," Lynn says. "People around here wouldn't run for public office because they knew they would be excoriated in the newspaper. I heard about a local veterinarian who had a standing rule: the Messenger was not allowed in his home. And he wasn't the only one who felt that way."

Enter Emerson and Cynthia Lynn. He is 37, she is 36. They are an attractive couple: good-looking, smart, athletic. They live with their infant daughter in a modern house that overlooks Lake Champlain. On a clear day, they can see Montreal.

They travel often and extensively, to Africa and, more recently, to India and Nepal. Emerson says it is a family dream to set up journalism seminars in Third World countries.

They met when he was working for the National Park Service in Colorado after his graduation from the University of Kansas. He went to work as night editor on the newspaper in Loveland, Colo.

They married in her hometown in Pennsylvania and went looking for work in Washington, D.C. For Lynn, a boy from small-town Kansas, it was a not-to-be-missed experience. He jumped into politics—Republican politics—working as press secretary first for James Pearson and then Nancy Kassebaum, both U.S. senators from Kansas. In the end, it was that Republican connection that convinced William Loeb that Lynn would be politically suitable to inherit the publisher's mantle.

During that time, the Lynns had been looking for newspapers to buy, focusing their efforts on the Colorado Rockies. Finally, Cynthia Lynn, who had spent childhood summers in Vermont, expanded her search, sending out queries to all parts of the country. After a brief flirtation with the Addison County Independent, they lighted in St. Albans.

What they had bought—Lynn will not discuss the purchase price, but the asking price at the time was rumored to be about $750,000—was a money-losing newspaper, bloated with inefficiency, ineptly managed. The staff was 42 people at the time. They trimmed it to 24 initially. Now it is back up to 36.

Cynthia Lynn, who has a degree in economics, took control of the business side and began an aggressive cost-cutting campaign, which included putting the advertising sales staff on commission. Even so, it took three years to put the Messenger in the black. Since then, the revenues from advertising sales have tripled, and the circulation has jumped from 3,700 to 5,000.

At the outset, there was hostility to contend with, the cumulative anger of a community that felt it had been wronged by its newspaper.

"It was grim coming in," Lynn recalls. "We had no idea of the hostility * * *"

Adds his wife: "We still have people who won't buy the paper for things that happened 25 years ago."

For the most part, that hostility has evaporated under the Lynn's stewardship.

"The Lynns have brought a positive approach," says St. Albans City Manager William Cioffi. "They've been extremely fair. Under them, the paper has had a good influence on the area."

The paper operates out of a large, brick building that sits on the railroad tracks north of town—a building so large, in fact, that the staff does not begin to fill it. Emerson oversees the editorial side, and Cynthia keeps a firm grip on all aspects of the business operation, including advertisting, production and finances.

In terms of content, the Messenger is a mixture of issues and features, historical society news and descriptions of the pets avaialble at the Humane Society for placement: "Kittens, enough colors and sizes to please just about eveyone. All very cute."

State news coverage is provided by the Associated Press because anything outside of Frankin County is outside the Messenger's backyard.

"What you have to do best is cover your own backyard,' says Emerson Lynn. "What I don't like to see is a paper filled with evidentiary news—the type of news where you can read the headline and know the story."

"We can be the tie that binds people to their community," says Cynthia Lynn. "We can run the kind of stories that you don't find in large metropolitan newspapers. That's why we like features."

Editorially, Emerson Lynn has made no secret of his moderately liberal politics, endorsing James Guest in his 1982 campaign against Sen. Robert Stafford, R-Vt., and Madeleine Kunin in her 1984 campaign for governor against John Easton. He is pro-gun control and pro-choice, two stands that sometimes put him at odds with his less liberal neighbors.

He is concerned, he says, "about the loss of farmland and about growth" but also in favor of economic development.

One issue that has drawn him some heat locally is his staunch endorsement of a plan by the Delaware North Corp. to open a dog track in St. Albans. James Levy, a local attorney and opponent of the track, insists that Lynn's support of the track is unethical and that the Messenger's coverage of the issue has been biased.

"I have a low opinion of the paper," Levy says vehemently. "It is one of the worst journalistic endeavors I have witnessed. Cynthia Lynn's father had financial dealings with Delaware North, and this was not disclosed. My wife wrote a letter to the editor about it, and he refused to print it. Throughout, the reporting has been slanted and biased."

Lynn does not deny that his father-in-law once had dealings with Delaware North, but those dealings, he says, are history.

"Years ago, Cindy's father owned a steel-casting company and sold it to Delaware North," he explains. "But that was years ago. Jim is tenacious. He was doing what he could to bring up something that wasn't there. Besides, he's missing the point—my wife has been publicly opposed to the track. She's signed petitions against it. I'm the one who's for it."

Levy's are not the only grumblings to be heard. A former part-time reporter for the Messenger, Pat Paquin, challenges Lynn's assertion that he is captain of a happy, well-run ship.

"He had a talent for gathering good people, but it seemed he didn't know how to deal with us once he had us," says Paquin. "There was a common sense that the Messenger was a stepping stone for him. The people who worked for Emerson felt a lack of commitment on his part. We felt we were a means to his end. We never knew what that end was, but we always suspected it was political ambition. Combined with the low pay, it created a lot of resentment in the office."

Not so, says Gary Rutkowski, who has been managing editor since the Loeb era.

"The best way to judge the morale is to look at how long people have been here," says Rutkowski, a 13-year veteran of the Messenger. "Several of us have been here a long time. There's plenty of opportunity for anybody who's unhappy to speak out."

Emerson, for his part, is baffled by the persistent rumors about his political aspirations. He says he enjoys politics and is glad he spent seven years in Washington. Without that experience, he says, "I would have gone from small-town Kansas to small-town Vermont without ever knowing what life in the big city was like."

Would he go back to politics?

"That's the last thing I want to do. I love what I do now. This is the only job I've ever done that I love completely and unconditionally."

Thursday morning staff meeting at the Addison County Independent is a loose affair. Some or all of the staff of 22 gathers around the oilcloth-covered picnic table in the coffee nook at the back of the large, open room where the newspaper is put together twice a week. People wander in, drink coffee, crack jokes. Both the staff meetings and the twice-weekly schedule of the Middlebury newspaper are recent innovations. Angelo Lynn, editor and publisher of the Independent since 1984, is presiding at the meeting on this Thursday morning. Sort of. The purpose of the gathering is to plan a summer outing for the staff, either to see the Vermont Mariners or the Montreal Expos. The boss comes in for a lot of teasing about his tendency to forget details.

But they are laughing with him, not at him. They know him as the kind of boss who is still toiling away in the wee hours of the morning on production days.

"It makes it a lot easier to be here until 2 a.m. when the publisher is working there beside you," observes Tim Peek, the news editor.

Angelo, 34 and his brother, Emerson, are different, but the differences are subtle—not differences of night-and-day but of morning and afternoon. Emerson is smoother than his younger brother, more gregarious—more political. Angelo is quiet, reserved, a touch shy.

Looks can be deceiving. In a little more than three years, Angelo Lynn and his wife, Sarah, 34, have taken what used to be a get-along, go-along community newspaper and turned it into an aggressive news-gathering operation that enjoys nipping at the heels of officialdom.

Although his circulation has held steady at around 7,100 newspapers—more than half of which are sold over-the-counter—he has doubled the advertising revenues and put in a state-of-the-art typesetting system known as pagination. The number of pages in the Thursday edition has jumped from 24 to 32. In February, he inaugurated a tabloid edition that comes out on Monday and circulates 9,000 papers.

From the community's vantage point, however, the most visible changes have been in the way the Addison County Independent reports the news. For years, under the ownership of Col. William Slator, the paper had been a bastion of right-wing opinion, with the colonel's editorials often appearing on page one.

In 1976, the Independent was sold to Gordon Mills, an easy-going man who ran an easy-going newspaper that was long on local gossip and short on controversy. Under Mills's stewardship, the paper ran blow-by-blow descriptions of the weekly selectmen's meetings and a comprehensive list of court news, including divorces. It was, in Mills' words, a newspaper for the "dinner-bucket guys."

In that time, Middlebury was changing. Dinner-bucket guys were being replaced by affluent newcomers, aging baby boomers who were drawn to town, in part, by the presence of Middlebury College. Their politics were liberal. They read the Addison County Independent to find out how the basketball team was doing and when the bake sale would be held; for news they turned to the rival Valley Voice, a tabloid-sized paper with a fondness for lengthy issue and analysis stories.

Cut to Colorado. In 1976, Angelo Lynn, graduated from the University of Kansas, was spending his time climbing mountains and skiing, a pursuit he followed for four years. In 1979, he left Steamboat Springs with a nest egg of $2,000 to buy a tiny Kansas weekly, which he and Sarah ran side-by-side for the next five years. It was a low-budget operation. He wrote the stories and took the photographs, she sold the ads. When times were good, they hired a third person.

Emerson Lynn is the one who told his brother about the Independent. In 1984, Angelo and Sarah came east, bringing with them the same attitudes about community journalism that they had put to work in Kansas.

"The most important aspect of a community newspaper is its news, good hard news," says Angelo Lynn. "It should be a mix of news and community information. It's that inside section that is the tie that binds the community—who's getting married, who died."

The focus of the effort, Lynn says, has to be very, very local: "We have to patrol our own backyard. Nobody else is going to do it for us. With dailies, the focus is diffused. Community papers can make a big difference in their own backyards."

Lynn took on the role of community watchdog aggressively. Some would even say he did it with a vengeance. To some extent, it was happenstance: not long after the Lynns bought the paper, Paul Staats, a longtime Middlebury resident who was the news editor, died. The job went to Peek, a young, energetic newsman whose style is far more confrontational than Staats' had been.

"The changeover ended up being more radical than we intended," admits Lynn.

Even so, Lynn and Peek are of like mind about the newspaper's role in the community.

Here is Angelo Lynn: "We make decisions on the front page about what issues we're going to go after. I make no bones about that. The USA Today idea that a newspaper should be all things to all people is absurd. We do that on our inside pages."

Here is Tim Peek: "There was the case of a high school teacher who was accused of molesting students. We reported it in detail. It's our feeling that it's good—although uncomfortable—for people to hear those things. I only came here after I felt confident that we saw eye-to-eye. It wouldn't be tolerable otherwise."

If Lynn and Peek see eye-to-eye, there are a number of Middlebury residents who believe the Independent has abandoned its role as the community's newspaper of record in order to promote its own causes.

A case in point: the March election for two open selectmen's seats. Angelo Lynn has editorialized often and strongly in favor of controlled growth, so strongly in fact, that some suspect him of being a "no-growther." The two incumbent candidates, Don Keeler Jr. and Doug Cone, were known as advocates of growth, while the two newcomers were more in agreement with Lynn. The paper pushed the issue hard, suggesting the town should "finish the job we started" two years before. In the end, Keeler and Cone were defeated, and the newspaper made no secret of its pleasure.

"There's no other viewpoint than his in Addison County," says Keeler, looking back on it. "He's promoting a no-growth community, not working to encourage good growth. He gets a little confused between his reporting and his editorials. There's no doubt in my mind that someone at the paper decided it was time to run me out of office. They did it to Bill McAllister two years ago, and I feel certain they'll do it to George Foster next time."

Adds McAllister: "To them, I was one of the good ol' boys. They wanted a change on the board and they got it. I went and talked to them for an hour and a half, but you can't defend yourself against them in print."

Certainly, not all Middlebury residents agree with Keeler and McAllister.

"I like what he's doing," says Peg Martin, a former selectman who is now a Democratic member of the Vermont House. "I think there is a very strong philosophical approach. I don't know whether I share his depiction of who the good guys and the bad guys are. But the kinds of things the Independent has consistently asked its readers to consider are the things I think are of great importance to this community."

The Lynns didn't go looking for the Essex Reporter. It came looking for them. Angelo Lynn recalls that Kit Wright, the owner of the 6,800-circulation weekly, walked into his office one day to ask whether he wanted to buy her newspaper.

"I knew them by reputation as smalltown newspaper people with a strong news background," says Wright, who will become town manager of Essex Junction. "This seemed like a natural extension of their abilities."

The first time Wright asked, Lynn, who was just about to go to a twice-weekly schedule, said no. Then he called up his older brother to discuss it. Emerson pointed out that it had the raw elements they both valued—"school sports, the school lunch menus"—that it offered them the possibility of a joint venture. Not long after, they said yes. The deal will be closed this month.

"The whole attraction of the Essex offer is that it's a good community paper," says Angelo Lynn. "She's got a good product. Of course, we'll change it, do some things to it. The most fun in the business is putting something new together."

Which makes people wonder if this isn't the start of something big, particularly those people who have heard rumors that Emerson Lynn, Jr. is a Kansas newspaper magnate (he isn't) who owns half a dozen newspapers (he doesn't). On the telephone,

he sounds more like a proud father than an empire builder.

"It tickles you as a parent to have your kids follow you in your career," says Emerson Lynn, Jr. of his two sons. "I think they're doing a great job."

"The primary difference between us is that I'm 64 and they're full of energy. They're more aggressive on some things than I would be. It's a family tradition that we're community-minded. I don't hesitate to lecture once in a while. You can't be nothing but a blank slate to write on."

So is this or is this not the beginning of the "Lynn Dynasty?" Papa Lynn says not.

"Vermont," he points out, "is not large enough to contain an empire."●

BUDGET SCOREKEEPING REPORT

● Mr. CHILES. Mr. President, I hereby submit to the Senate the budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $0.2 billion in budget authority, and by $2.9 billion in outlays. Current level is under the revenue floor by $10.6 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311(a) of the Budget Act is $153.9 billion. $1.4 billion below the maximum deficit amount for 1988 of $155.3 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 20, 1988.

Hon. LAWTON CHILES,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1988 and is current through June 17, 1988. The estimated totals of budget authority, outlays, and revenues are compared to the appropriate or recommended levels contained in the most recent budget resolution (H. Con. Res. 93). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32.

No changes have occurred since my last report.

Sincerely,

JAMES L. BLUM,
Acting Director.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 100TH CONGRESS, 2D SESSION AS OF JUNE 17, 1988

[Fiscal year 1988, in billions of dollars]

	Current level[1]	Budget resolution H. Con. Res. 93[2]	Current level +/− resolution
Budget authority	1,145.8	1,146.0	−.2
Outlays	1,031.8	1,034.7	−2.9
Revenues	922.2	932.8	−10.6
Debt subject to limit	2,511.6	[3]2,565.1	−53.5
Direct loan obligations	34.4	34.6	−.2
Guaranteed loan commitments	155.1	156.7	−1.6

[1]The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2]In accordance with Sec. 5(a)(1)(b) the budget authority and outlays include an adjustment that reflects the amount reserved for subsequent allocation under section 302(a) of the Congressional Budget Act.

[3]The permanent statutory debt limit is $2,800.0 billion.

PARLIAMENTARIAN STATUS REPORT, 100TH CONGRESS, 2D SESSION, SENATE SUPPORTING DETAIL, FISCAL YEAR 1988 AS OF CLOSE OF BUSINESS JUNE 17, 1988

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			911,050
Permanent appropriations and trust funds	792,035	674,291	
Other appropriations	569,646	574,400	
Offsetting receipts	−202,566	−202,566	
Total enacted in previous sessions	1,159,115	1,046,125	911,050
II. Enacted this session:			
Rescission of Jewish Education Centers Abroad (P.L.100–251)	−8	−5	
Veterans Home Loan Program Emergency Amendments (P.L.100–253)		1	
Assistance and Support for Central America (P.L.100–276)		43	
Veterans Emergency Supplemental (P.L.100–304)	709		
Veterans' Benefits and Services Act of 1988 (P.L.100–322)	1	1	
Atomic Veterans Compensation Act (P.L.100–321)[1]			
Total enacted this session	702	40	
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses:			
College-aid Annual Appropriation for Territories (S–1652)	([2])	([2])	
Catastrophic Health Care (H.R. 2470)		5	
Total conference agreements	([2])	5	
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Disaster relief	142	85	
Special milk	5	1	
Special benefits	83	83	
Special benefits for disabled coal miners	7		
Medicaid	51	51	
Social services block grants	50	48	
Veterans compensation:			
Previous law	282		
H.R. 1811	15	12	
Payment to air carriers	8	2	
Coast Guard retired pay	6	6	
National wildlife refuge fund	1	1	
Total entitlement authority	649	288	
VI. Adjustment for economic and technical reestimates	−14,650	−14,650	11,200
Total current level as of June 17, 1988	1,145,816	1,031,808	922,250
1988 budget resolution (H.Con.Res. 93)	1,146,000	1,034,700	932,800
Amount remaining:			
Over budget resolution			
Under budget resolution	184	2,892	10,550

[1]This act increases the current law estimate for veterans compensation, which requires an appropriation. The amount is shown in section V.

[2]Less than $500,000.

Note: Numbers may not add due to rounding.

Estimate of fiscal year 1988 deficit G–R–H basis

	Millions
Revenues:	
Sequestration base	$897,007
Hard taxes	9,261
IRS compliance (gross)[1]	1,850
User fees	−525
Total revenues	907,593
Spending:	
Sequestration base	1,076,942
Defense	−5,051
Non-Defense discretionary	−2,514
Omnibus Budget Reconciliation of 1987	−6,438
Debt service	−1,328
Legislation this session (net)	52
Other	−57
Total spending	1,061,457
Deficit	153,864

[1]Estimate based on IRS funding level in Public Law 100–202.●

ITALIAN STEEL INDUSTRY PROPOSES TO CONTINUE SUBSIDIZING

● Mr. HEINZ. Mr. President, one of my more amusing yet aggravating experiences over the past 10 years has been the biennial meeting I always seem to have with someone from the European Community explaining with a straight face how the EC member nations plan shortly to eliminate their steel subsidies. I have been having these meetings since 1978, so Senators will forgive me if I begin to react to these promises with some skepticism.

In the trade business we frequently talk about elasticity—elasticity of supply and demand. With respect to EC steel subsidies, we probably ought to be talking about elasticity of promises, because they have turned out to be rubber indeed.

The most recent shameless manipulation of economic realities comes, not entirely surprisingly, from the Italians, who have just finished putting together their third industry bailout plan in 7 years for EC approval.

This plan calls for additional subsidies of over 7 trillion lira—roughly $5.4 billion. Of course, this additional subsidy is hardly being provided to an industry with a clean slate. Finsider, the state steel company, has been losing money at the rate of 5 billion lira or $3.8 million per day and currently has debts of over 10 trillion lira. If it goes any higher they are going to run out of space on their calculators for all those zeroes.

And what, one might ask, will be the restructuring consequences of this new program? The answer is, apparently, a reduction in capacity of 1.2 million tons and a gross job reduction of 20,100, I say gross job reduction because there is also a plan to create 17,000 new jobs in the affected areas, apparently also with state subsidies. Squeezing these figures into my calcu-

lator shows that those subsidies work out to $4,500 per ton of capacity reduced and nearly $270,000 per job lost. The American industry should have such a break.

And that, Mr. President, is precisely the point. From its peak, the U.S. industry has surrendered over 56 percent of its work force—more than 250,000 jobs—and over 50 million tons of capacity without Government subsidies. One of the main causes of that shrinkage, frankly, has been EC subsidies that have allowed imports from noncompetitive European producers to undercut American sales. The EC for 15 years has avoided serious adjustment in its steel sector by exporting its unemployment to the United States, and now it appears that the Italians want that process to continue. It is very hard to explain to steelworkers in Pittsburgh, Youngstown, Gary, or wherever that they have lost their jobs so Italian steelworkers can keep theirs.

Fortunately for sanity and economic rationality, this subsidy plan has not yet been approved by the EC. I hope it will be rejected. Perhaps the Community will take its responsibility seriously and insist on the adjustment that is so obviously needed. Perhaps the EC member governments will stand up to their workers. Perhaps the Sun will rise in the west tomorrow morning. They are all equally likely.

Mr. President, what this all means is that the world steel industry has far too much capacity and is still in a state of crisis. The existence of the President's voluntary steel restraint program, which expires next year, has provided our industry with badly needed breathing room. But, unless the VRA's are extended next year, we can expect what is left of the domestic steel industry to be smothered in an avalanche of subsidized and dumped steel from Italy, Brazil, and other countries. With the practice of other nations' subsidizing their steel industries alive, well and growing, we will need to have the next President continue the VRA program or risk losing our steel industry entirely.●

PROF. JAMES EATON—A MAN OF UNCOMMON ACCOMPLISHMENTS

● Mr. CHILES. Mr. President, I rise today to inform my colleagues of the uncommon accomplishments of one of Florida's finest citizens, Prof. James N. Eaton, Sr.

Professor Eaton has been a college teacher for more than 30 years. His career has spanned those years and a countless number of students. He is currently an archivist/curator at Florida A&M University in Tallahassee.

Next month, friends, colleagues, and ex-students of Professor Eaton will get together at Bethel AME Church in Tallahassee and pay tribute to the man who is a distinguished teacher, historian, researcher, archivist, and community activist. James Eaton didn't just teach history—he lived it. During the height of the civil rights demonstrations in the South, Professor Eaton gave life to Thomas Jefferson's words "Life, liberty and the pursuit of happiness." He cajoled, he persuaded, he motivated and he participated. He lived his creed and that helped to make his creed more credible to generations of Floridians and other young people from around the country.

Ms. Geneva H. Westley who is serving as chairperson for the James N. Eaton Appreciation Committee wrote these words describing Professor Eaton:

Professor Eaton has been a college professor for more than 30 years. He has been recognized as "Teacher of the Year", more than once, by Florida A&M University in Tallahassee, Florida; Miles College in Birmingham, Alabama; and Hanover School for Boys in Richmond, Virginia. Professor Eaton is admired by his many students as a great teacher, humanitarian and friend.

"Professor", as he is fondly called, is equally famous for his work in preserving the history and culture of Afro-Americans by maintaining the philosophy that "Afro-American History is the History of America." During the last 30 years, his voice has resounded through the halls of FAMU, proclaiming the importance of the role of black people in our country. Professor Eaton's steps through history are heavy, leaving deep historical imprints for all who dare to follow. His voice made it possible to see the slave ships and to feel the pain of the ankle shackles. Professor Eaton is truly a master of history.

As archivist/curator for the Black Archives Research Center and Museum, he transformed the Carnegie Center, the oldest building on the FAMU campus, into an outstanding museum.

Finally, Mr. President, I remember being Professor Eaton's guest at FAMU, his "Teacher for a Day" and it was a worthwhile event for me. The warmth and affection demonstrated by Professor Eaton's students was genuine and admirable.

Although a prior commitment will not permit me to join the rest of Professor Eaton's friends in paying tribute to him in July, I want to take this opportunity to express my best wishes.

Mr. President, I would like these important facts about the Black Archives Research Center to be considered by my colleagues.

The Black Archives Research Center and Museum in located in the oldest building on the Florida A&M University campus. Completed in 1907 with the assistance of a $10,000 grant from Andrew Carnegie, this building has been placed on the National Register of Historic Places.

The purpose of the Black Archives was set forth in an act of the Florida Legislature in 1971 which mandated the establishment of a repository to "serve the State by collecting and preserving source material on or about black Americans from the earliest beginnings to the present."

With grants from the Florida Bicentennial Commission, the Winn-Dixie Foundation, and the State legislature, the archives was formally dedicated and officially opened in 1977. While the archives has an excellent Florida collection, it is not limited by State or national boundaries. Part of its scholarly and cultural responsibility is the collection of any materials reflecting the black presence and participation in Southern, national, and, as far as possible, international history. The holdings and services are extremely varied: artifacts, manuscripts, art works, oral history tapes, meeting and research rooms, and a mobile touring museum.

Because a group's history is as valid as the evidence supporting it, the Black Archives Research Center and Museum diligently continues to enlarge its holdings, and all interested persons are invited to support this effort. Donation of materials are guaranteed not only appreciation but safety, permanence, and use in an officially authorized archives.

Special holdings:

The Harriet Tubman Collection (selected items on loan).

The Benjamin French Collection.

The S. Randolph Edmonds Collection.

The Neil C. Mooney, Art Consultant, State of Florida Department of Education, African Art Consultant, and Artifact Collection.

The Cannonball Adderley Collection (selected items).

The Don Hill Collection of African memorabilia and artifacts.

The Sarah Eaton and Alice Brickler Collection of antiques and rare books.

The Johnnie V. Lee Collection of rare and old recordings of famous black musicians.

The Edward Jones Newsclipping File.

The Jake Gaither films and tapes on football in America.

The Jesse McCrary papers.

The Coon Memorabilia.

Ante-bellum and post-bellum artifacts and materials.

Memorabilia of the 54th Colored Regiment, United States Army.

Original copies of the National Anti-Slavery Standard (1864) and the Liberator (1854).

Black Americans in Congress Exhibit.

Public and private papers of the presidents of the University from 1888 to the present.

The Floy Britt Collection of photographs and materials on the 4-H in Florida.

Official Records of the National Negro Home Demonstration Agent Association.

Old photographs, out-of-print sheet music, pamphlets, and numerous brochures.

Frank E. Pinder Collection of Ethiopean and African artifacts.

Lamar E. Fort Collection of African artifacts Fannye A. Ponder Collection featuring Black Women in America.

John F. Matheus Collection of Historical Papers from the Harlem Renaissance of the 1980's.●

HEALTH CARE IN RURAL AMERICA: THE CRISIS UNFOLDS

● Mr. ROCKEFELLER. Mr. President, I would like to draw my colleagues' attention to a recently released report, commissioned by the National Rural Health Association and the National Association of Community Health Centers, entitled "Health Care in Rural America: The Crisis Unfolds."

This report's title is very telling. Health care in rural America has always had troubled times, but now the crisis is truly unfolding. Shortages of health care workers are worsening, hospitals are closing, and, as a result, the health status of many rural Americans is deteriorating. In many isolated, rural areas of our country, it is the sheer determination and strong will of a few dedicated individuals that are keeping the doors of many health care facilities open. We can no longer ignore this situation—this crisis.

Rural America has slipped into poverty and Federal assistance has eroded away. Rural Americans are hurting, and there are fewer and fewer resources available to help them heal, prevent their illnesses, and provide them comfort. They have always managed to struggle along—quietly, desperately, and proudly—but the crisis will continue to unfold, continue to worsen, unless we vigorously tackle the inequities and the chronic shortages that typify the health care situation in many rural communities.

The Reagan administration has cut assistance for rural programs by 58 percent since 1980. At the same time, unemployment rates in rural areas have outstripped urban unemployment rates and up to 35 percent of all rural workers are underemployed. Unemployment and underemployment effectively limits access to health care because most Americans obtain health care insurance through the workplace.

Sadly, my State of West Virginia is reeling from the effects of the President's budget policies since his inauguration in 1981. A report by the West Virginia Legislative Task Force on Uncompensated Health Care and Medicaid Expenditures reported that 13 percent of all West Virginians rely on Medicaid for health insurance, in comparison to 8 percent nationwide, and 1 of every 6 persons in West Virginia—16 percent of the State's population—is without health insurance. In West Virginia, uncompensated hospital care is higher than the national average and, in 1986, primary care centers provided over $5 million of free care to persons unable to pay their health care bills.

And, as this report bleakly reminds us, the list goes on. Rural hospitals nationwide are closing or are in dire financial straits; physicians and nurses are in short supply; the medical liability crisis for obstetrical services is forcing women living in rural areas to travel long distances to receive prenatal care and to deliver their babies; and rural areas must also deal with the homeless and victims of AIDS, problems usually characterized as urban dilemmas.

Many rural hospitals are fiscally limping along day by day. The most recent data showed rural hospitals, on average, had negative profit margins 3 years after implementation of Medicare's prospective payment system. It's difficult for these rural hospitals to diversify and strategically plan their future when their bottom line is chronically red. The report emphasizes that the very existence of rural hospitals is threatened.

The rural health care situation is more desperate today than yesterday. The report states if you are poor, black, Hispanic, or elderly, you should avoid illness at all cost and that rural residence alone increases a poor person's chance of being sick and even dying. It even goes so far to say that high-risk mothers and infants, AIDS patients, elderly Americans with chronic health problems, and accident victims should not live in rural areas. This assessment of the rural health care system is shocking.

The American way of providing health care through private employer-based insurance and public insurance programs for the very, very poor, the disabled, and the elderly is clearly inadequate. Over 30 million people are without any type of health insurance coverage. In rural areas, where the unemployment rate is high, the population sparse, and poverty rampant, the problems are even more apparent.

This report lays out the grim facts and tells us that a coordinated, comprehensive approach to the rural health care crisis is essential. Unfortunately, our Federal deficit exceeding $140 billion prevents a solution through any broad sweeping legislative proposal. Targeting resources however at the neediest people can at least serve as part of the solution.

Rural America, with 25 percent of the Nation's population, has 38 percent of the Nation's poor and receives less Federal assistance for health and social services per capita than the U.S. average. It's essential that we, at least, provide the same Federal assistance to rural areas that we are providing to urban areas. I would even argue that rural areas need additional Federal assistance for health and social services because of the current dearth of health care services and severe shortage of health care workers in rural regions.

I know that my colleagues will find this report as disturbing as I did, and I look forward to working with them to improve access to and the quality of health care for rural Americans. I ask that the report, "Health Care in Rural America: The Crisis Unfolds" be printed in the RECORD.

The report follows:

HEALTH CARE IN RURAL AMERICA: THE CRISIS UNFOLDS

(Report to the Joint Task Force of the National Association of Community Health Centers and the National Rural Health Association)

INTRODUCTION

Many of the problems in rural health care are well known. Most policymakers know there is a physician and nursing shortage or that rural hospitals are in financial distress. Unfortunately, much of the research in this area is issue specific and is descriptive of the depth of the problem rather than analytically looking at the interplay of the diverse issues. The issue specific nature of the research then produces a "shotgun" approach to public policy development, when a coordinated approach would be more effective. For example, increasing medicare reimbursement to rural hospitals to more accurately reflect costs, without addressing the problem of the shortage of physicians in rural areas is to provide the hospital with resources to support the cost of inpatient care without the physicians to provide the care. This report is designed to provide an analytic view of the diversity of issues and is intended to stimulate a coordinated approach to public policy solutions.

The report begins with a description of the nature and extent of the deteriorating situation in rural America. The impact of various issues and trends on several sectors of the rural health care system and different sectors of the rural population are then examined. The report concludes with a set of recommendations that are intended to provide direction for federal and state public policy makers.

This report has been developed over the last year as a cooperative effort of the National Association of Community Health Centers and the National Rural Health Association and in collaboration with other national organizations who share common concerns and goals.

THE DETERIORATING SITUATION

The economic situation in rural America continues to deteriorate, increasingly burdening a health care system that has been chronically inadequate to meet the needs of rural Americans. In order to understand the diversity and complexity of the problem, one may look at the following as examples:

In Montana, a young family doctor is giving up his practice in his hometown due to the rising cost of medical liability insurance. His premiums are now $53,000 per year—more than his net income last year. He could lower his premiums by stopping his small obstetrics practice, but delivering babies is the "joy" in his otherwise sorrowful work. If he can't deliver babies he said he would leave his hometown and go into aerospace medicine. His departure will leave a vast area without ready access to obstetrical services.

In West Virginia, a family of four lives in poverty. The father has been out of work for over four years, no longer qualifying for unemployment assistance or being counted in the unemployment statistics. He was a coal miner, put out of work by new technology. The family is essentially homeless, living in a small, run-down house with no running water or flush toilet. They live on a small public assistance check and food stamps—nearly 70 percent of the county's

population is on food stamps. The state's Medicaid program is nearly bankrupt, so the local community health center is the only place they can go for health services. In other places in West Virginia, accounts receivable from Medicaid and bad debts from people with no insurance are threatening to close some community health centers.

In Missouri, a small town has been trying for over two years to recruit a family doctor to replace their aging local doctor. The town's small hospital is in serious financial condition, partly because medicare pays it nearly 40 percent less for its services than hospitals in the city 70 miles away. About 60 percent of the hospital's business is from the elderly. The hospital is having trouble recruiting nurses too, because they don't have the resources to increase wages or expand benefits because of negative profit margins.

In South Dakota, a farm family has hit hard times. They are using every penny to hold off the family's creditors, and they have dropped their health insurance policy as an expendable item. They pray they will not get sick or injured. They are at high risk since farming is one of the most hazardous occupations in America. Their new poverty is causing great stress, and the husband is drinking too much. Help is hard to find because the community mental health center has dropped its outreach into their rural area.

In Colorado, two family doctors have been in practice for two and three years under the auspices of the National Health Service Corps. One doctor is leaving to find a more lucrative, less demanding practice in the city. The remaining doctor will stop obstetrical practice when the other doctor leaves because the load is too heavy for one doctor and the National Health Service Corps has other doctors available for placement. Over 100 pregnant women per year will have to drive to the next distant town for services. Private recruiting efforts have been unsuccessful for this remote town.

Although one-quarter of all Americans live in rural areas, public funding for health care in rural America has consistently lagged behind the U.S. average. At the federal level, per capita expenditures for health and related services are far lower for rural residents: 42 percent fewer health service dollar per capita than the U.S. average; and 50 percent fewer social service dollar per capita than the U.S. average.

Programs which combine federal and state responsibility mirror federal expenditure trends:

70 percent of the rural poor live in states where the maximum AFDC benefits are below the national median.

The rate of qualification for public assistance is 37 percent lower in rural ares, and more than 75 percent of the rural poor do not qualify for public assistance.

Current statistics on the 1980s indicate that an ever-increasing demand is being placed on inadequate rural resources. Farm closures, unemployment, loss of insurance, and inability to pay for health care have provided additional pressures on the rural family:

Since 1979, reversing a historic trend, the rural unemployment rate has been consistently higher than the urban unemployment rate. In 1979, 5 percent of the 2040 nonmetropolitan counties had high (9 percent or above) unemployment rates; by 1985, that figure had grown to over 50 percent of rural counties having high unemployment.

Between 1981 and 1986, 650,000 farms were foreclosed nationwide and in 1987 alone, American families gave up farming at the rate of 2,000 per week.

Between 1981 and 1983, rural America lost 500,000 jobs.

Current estimates are that 35 percent of rural workers are under-employed, either working part-time or in jobs beneath their skill levels.

Recent predictions based on expanding and contracting areas of the economy are that only one job will be created in non-metro areas for every seven created in the city.

These trends have placed more rural residents in jeopardy, as loss of insurance and income erode the ability of the rural family to purchase health care. For all races, the median family income for non-metro and farm families is consistently lower than it is for metro and non-farm families. In 1985, 17 percent of all farm families, and 15 percent of all non-metro families, had income below the federal poverty level. For some segments of the rural population, the situation is much worse. As many as 36 percent of rural Hispanic families live in poverty. One of every five elderly non-metro residents lives in poverty, a rate 15 percent higher than for elderly residents of the United States as a whole. The combined result of these statistics shows that rural America, with 25 percent of the country's population, has 38 percent of the nation's poor. At its extreme, the problem is heavily concentrated. Of the 86 countries nationwide in which ⅓ or more of the population is in poverty, all but one are non-metropolitan in nature.

Both employed an unemployed rural residents feel the economic pressure of current trends. Real per capita income in farm counties fell from 91 percent of the metropolitan level in 1973 to only 76 percent in 1984. All rural residents, as a group, have a 15 percent higher rate of uninsuredness than the U.S. average, and a 24 percent higher rate than their metropolitan counterparts. The low levels of insuredness contribute to a cash drain on the rural family. Rural residents pay, on average, 10 percent more of their income out-of-pocket for health care than do their urban counterparts. Among the poor, those supposedly protected by the "safety net," rural residents experience a 10 percent higher rate of uninsuredness than the U.S. average, and a 44 percent higher rate than their metropolitan counterparts.

The results of this long-standing problem, exacerbated by the economic downturn of the 1980s, may be seen in the health profiles of rural Americans. Rural residents are more likely to suffer from chronic disease conditions, including: arthritis, visual and hearing impairments, ulcers, thyroid and kidney problems, heart disease, hypertension and emphysema. They are also more likely to suffer limitations in activity as a result of these chronic conditions than are urban dwellers.

More hospitals, physicians and nurses, and other health personnel and services will be required to meet these increasing needs. Yet current trends in availability of health care facilities and personnel show marked decreases and consistent inadequacy which paint a bleak picture for rural Americans.

HOSPITALS

More U.S. hospitals closed in 1987 than in any other year during the decade, with record closures of rural hospitals. According to a recent study funded by the Center for Health Services Research and carried out by the University of Illinois at Chicago, a total of 80 hospital closures were noted during the year—and 40, or half, of the closures were in nonmetropolitan areas. In contrast, during the period 1980-85, rural hospital closures average 20 per year and were only 35 percent of all community hospital closures average 20 per year and were only 35 percent of all community hospital closures. Almost one-third of the nation's hospital closures were in Arkansas, Louisiana, Texas and Oklahoma alone.

The increase in hospital closures relates closely to Medicare's implementation of the Prospective Payment System (PPS) in 1984, with over twice as many hospital closings in 1987 as in 1984. Under PPS, Medicare pays rural hospitals 36 percent less than urban hospitals for the same services. As a result, according to the Department of Health and Human Services, in 1986 urban hospitals made a 10.82 percent profit margin on PPS patients, while rural hospitals lost an average 0.69 percent.

The pressure on hospitals will have results which place even more pressure on the rural family's income. Predictions by Lewin/ICF, in a recent issue of Medical Benefits include: Increased numbers of closures of hospitals, especially in inner cities and rural areas which need them most; increased shifting of higher medical costs to the patient, as insurance coverage falls further behind rising medical costs; decreasing ability of hospitals to meet increasing needs for charity care; and decreasing ability of hospitals to adopt newer technology due to dollar limits on diagnosis-related group (DRG) health care interventions.

In the current atmosphere, proponents of lower health care costs depend heavily on preventive health interventions as a way to maintain good health outcomes while avoiding the increased cost of secondary or tertiary treatment. This strategy depends on access to entry level care, including local physicians, mid-level practitioners, and an availability of other health services which work in a coordinated fashion to manage total care for the patient efficiently. Unfortunately, supplies of such providers, and the existence of necessary comprehensive care systems, are not in evidence in rural America.

PHYSICIANS

Many rural communities continue to have problems in recruiting and retaining physicians, despite the alleged national "doctor glut." While some diffusion of doctors into rural areas is taking place, it is very slow and is not occurring uniformly across the country, according to a recent study performed by Kindig and Movassaghi of the University of Wisconsin-Madison.

The study showed that in small rural communities between 1975 and 1985, physician-to-population ratios grew at a rate less than half as fast as in the nation as a whole (14.2 percent compared to 32.5 percent). Moreover, small rural communities continued in 1985 to have physician-to-population ratios less than one-third that of national rates (53 physicians/100,000 versus 163 physicians/100,000).

One of the most important programs to address this problem, the National Health Service Corps (NHSC), is being dismantled after over 15 years. At the very time when rural provider needs are high, the field strength of the NHSC is declining. Nearly 65 percent of Corps placements have been in rural areas. By the end of FY 1989, the NHSC field strength will be only slightly more than half its field strength at the beginning of FY 1988 (from 2,595 in 1988, to

1,401 in 1989). Projections for the following year are that about 800 NHSC scholars will be available for placement in 1990. This pattern, should it continue, will mean that thousands of rural communities will be at risk for medical care, and they will be forced to try to compete with wealthier, more attractice practice settings to fill physician vacancies.

NURSES

The current nursing shortage is the result of numerous trends, including projected reductions in workplace opportunities as health care facilities close, and lowered federal support for nursing education. Nursing salaries have not kept pace with growing professional opportunities in other sectors, and are under increasing pressure due to implementation of general cost-saving measures in the workplace as reimbursement decreases for patient care. Projections by Lewin/ICF in *Medical Benefits* indicate that 10,000 fewer nurses will graduate in 1992 than did in 1984. The rural nursing shortage may grow even faster than the national shortage, as rural health care facilities with inadequate resources find it increasingly difficult to compete for nurses in the face of increased demand for their services in all settings. This is of particular import to rural areas, given the health status of rural residents and the shifting emphasis to lower cost, primary care in managed care service delivery settings. Nurses, both RNs and midlevel practitioners, form a significant proportion of the front line professional provider staff upon which such a system depends. With increased demand on an already fragile system of rural health care, the nursing shortage will mean lack of any access to entry level care for many rural residents.

INCREASED DEMAND

A consistent theme in discussions of rural health care has been the differentially low access to providers and facilities, as well as a lack of some or all of the components of a coordinated care system. Decreased federal funding for emergency medical services has left many rural residents without access to life-saving care in emergency situations. Long distances and provider shortages work to disrupt the smooth passage of a patient up and down the technology gradient when necessary, thus resulting in inadequate communication of patient needs and problems among primary providers, specialty care professionals, and extended care/recuperation resources. Further, resources necessary for successful outcomes following secondary or tertiary treatment are often unavailable. Surgical patients, high-risk mothers and infants, and other high-risk patient groups require consistent medical and health care during the entire course of resolution of their presenting problem. For example, the rural resident who is a victim of a serious automobile accident faces increased risk due to inadequate emergency medical transportation. Even assuming that transportation is available and the hospital treatment is successful, that increased risk is still not ameliorated: necessary intermittent follow-up, nursing care during recuperation, home meals and a safe, clean environment may not be available, especially to low-income persons. Shortages of ambulance services, home health providers, social service agencies and on-site medical/health providers decrease the patient's chance of obtaining the longer term, managed care necessary for positive outcomes. While this is true for all patient categories, it is especially illustrated by four problem groups facing rural providers today.

MEDICAL LIABILITY CRISIS

According to a recent issue of *Medical Economics*, 63 percent of all family physicians and 45 percent of all general practitioners have dropped obstetrical care during the past five years in order to minimize malpractice risks. Medical liability premiums charged by physician-owned insurers increased by 99 percent in Utah, 73 percent in Colorado, 60 percent in North Carolina, 55 percent in New Mexico, 50 percent in Wyoming and 46 percent in Kentucky.

A recent survey by the Kansas Academy of Family Physicians showed that 23 percent of their members have dropped obstetrical services in the past five years citing rising medical liability insurance costs as a major deterrent. The group's executive director predicted that obstetrical services, especially in rural areas, is headed for a crisis.

A recent unpublished study in Colorado showed that if malpractice insurance continues to increase, the number of physicians providing obstetrical care will decrease, the distance pregnant women must travel and the number seeking care outside their county will increase, and low-income women are again the most vulnerable. Already 21 percent of the state's family and general practice physicians had dropped obstetrics in the past five years, citing concerns over malpractice insurance costs and fear of litigation as the major reasons. Over 60 percent of physicians providing obstetrics care for Medicaid and indigent women said they would drop obstetrics with increasing malpractice premiums. If rates were to rise only modestly to anticipated rates, 66 percent of rural FPs and 47 percent of rural OB/GYNs would drop obstetrics, resulting in thirteen additional counties (32 in all) having no medical obstetrical care. An additional 15 counties would have only one obstetrical provider.

INFANT MORTALITY

Reduction of infant mortality is linked to relief from poverty and access to care. Perinatal care, good prenatal experience, and adequate follow-up are dependent on adequate housing and nutrition, health education, availability of specialty knowledge and competence, access to long-term follow-up by trained professionals, and adequate resources to assure the availability of clothing, heating, and necessary medication. Gaps in the service network and lack of resources would be expected to increase the risk of infant mortality. That is, we would expect higher infant mortality rates in rural populations due to lack of access to comprehensive care, especially in populations with high rates of poverty. In a U.S. population with an overall infant mortality rate of 11.2 deaths per 1,000 live births, we find the following:

INFANT MORTALITY

	Metro	Non-Metro
Black	19.1	19.7
White	9.6	10.0

The above statistics indicate a higher infant mortality rate for rural areas across race. Using fetal mortality for Blacks only, the figures are:

BLACK FETAL MORTALITY

All United States	Metro	Non-Metro
13.7/1,000	13.1/1,000	16.3/1,000

Non-metro Black/U.S. residents experience a 25 percent higher rate of fetal mortality than their metro counterparts.

The infant mortality rates for rural minorities is horrendous. This factor is now being further exacerbated by the malpractice insurance crisis that is forcing family practice physicians out of obstetrical services. This will only lead to an even higher infant mortality rate in rural areas.

THE HOMELESS

Rural statistics on homeless individuals have been hard to develop, partly due to a lack of statistical data which in itself is a result of the inadequacy of rural resources. Although rural areas have 67 percent of all U.S. substandard housing, increasing unemployment rates already higher than comparable metro rates, and snowballing employer and business failure, homelessness is still commonly viewed as a predominantly urban problem. Disparity in the approach to the homeless problem enabled by recent grants under the newly created Section 340 of the Public Health Law are shown in the table below:

	Percent of population	Estimated percent of age of homeless—CA&MD studies	Number of grantees under sec. 340
United States	100	100	109
Metro	75	82	99
Non-Metro	25	18	10

In recognition of the need for a comprehensive service approach to the needs of the homeless, Section 340 of the Public Health Service Law, created by the Stewart B. McKinney Act of 1987, includes primary health care, substance abuse programs, and mental health resources. With few resources overall to assure access to health and social services, rural communities have been provided with additional federal dollars, but nonetheless these are obviously insufficient to meet projected needs.

AIDS

The increasing seriousness of the AIDS epidemic has been projected to have devastating impact on Americans and on the health care community which serves their needs. AIDS patients represent an excellent group to illustrate comprehensive care needs, as available and sensitive care is necessary at all levels of the technology continuum. Screening and education, as well as counseling, are indispensable at entry levels to meet the medical, social, and emotional needs of the patient. The course of the disease process alternates between demand for high-technology intervention and longer term-supportive care. The entire system depends on the availability and coordination of resources to provide testing, counseling, education, primary medical care, specialty and hospital interventions, home care, respite, and hospice care.

Very little has been said concerning rural responses to AIDS patients, and few rural areas possess the coordinated patient care system necessary to meet this challenge. Fewer still have the resources to actually create such a local system. While AIDS continues to predominantly impact the urban delivery system, Centers for Disease Control (CDC) statistics indicate that rural areas are facing a growing problem which will further tax their limited resources or force victims of AIDS to move to urban areas, aban-

doning their existing social support systems and placing additional demands on metro health care services. Fairly consistent CDC data indicates that 20 percent of AIDS cases are rural, an indication that, proportionate to population, the illness is more evenly distributed in metro/non-metro areas than is generally thought. The AIDS syndrome is an extreme test of the national health care system. In rural areas, it will place further and heightened stress on a system already inadequate to meet the needs of a less fortunate population.

MIGRANT FARMWORKERS

Each year, more than half a million migrant agricultural workers and dependents leave their homes, enter the migrant "stream," and travel throughout rural America. In many ways, their relative degree of access to health services defines the lower end of the continuum. The general problems of resource and provider shortage, inadequate housing and social services, follow-up/management issues, and poverty are exacerbated for this population of people by the nature of their activities. Within this country, they are an "outsider" group in each community they visit, with family and social support groups far away. In general, their outsider status places them at the bottom of the priority pyramid when services are available, and keeps them from finding system access points which are often not well understood even by long-term residents. Given the nation's ongoing dependence on migrant and seasonal labor illuminated through discussions of the effect of the new immigration law, rural America will continue to face this problem for some time to come, and will need to deal more effectively with access to existing services as well as the problem of care in areas which do not now have migrant health programs available.

FURTHER ISSUES

To recapitulate, rural areas have long-standing problems in terms of poverty, access to and availability of health care providers, and lack of common resources to assure continuity of care. While the current rural economic crisis has added to the problem, it is by no means a new or cyclic phenomenon. A recent study by Ross and Morrissey (1987) indicates that, while a larger proportion of the nonmetropolitan population is poor, the percentage of nonmetropolitan poor who are persistently poor is about the same as for the metropolitan population. They found that "Over 8 percent of non-metro residents were persistently poor in 1982 compared with 5 percent of metro residents. An additional 14 percent of nonmetro and 9 percent of metro residents experience transitory periods of poverty. And, despite the concern about poverty spawning a permanent underclass in urban ghettos, the share of poor who were persistently poor was about the same (35 percent) in both non-metro and metro areas" (Ross & Morrissey, 1987). Thus, while overall metro-non-metro statistical comparisons tend to mask the presence of affluent population segments in urban society, comparisons of the poor and underserved in rural and urban areas clearly show mutually-shared economic and health care access disadvantages.

Moreover, general problems of access to health care in rural areas are exacerbated for minorities and special population groups. Blacks, Hispanics, and the elderly face crushing poverty in areas where care often is more available with increased ability to pay. Moreover, residents of extremely rural (less than 6 persons per square mile) areas, migrant farmworkers, AIDS patients, and high risk mothers and infants experience most sharply the lower end of a continuum of provider resources already attenuated by geographic distances and population limitations. Consideration of rural health problems must involve discussions of both patient issues and provider/resource availability.

PATIENT ISSUES

Patient issues include both availability and affordability of care. If no care is available, or if continuity of care is interrupted or poorly coordinated, all potential patients suffer. Interruptions in availability of care and current lack of services are serious problems facing all rural residents, and reasons for availability problems are increasingly economic in nature.

Regardless of improvements which might be made in availability of care, affordability will remain a separate but related issue. Especially in rural areas of the United States today, if you are Black, Hispanic or elderly, you should avoid illness at all cost. The ability of poverty populations to obtain health care in rural America, as demonstrated by differential morbidity and mortality data, is so restricted as to make rural residence alone a clear health danger to the poor. And for those already ill or at risk, rural residence is an even greater threat. High risk mothers, high risk infants, AIDS patients, elderly Americans with chronic health problems, accident/trauma victims, and others for whom communication along the health care system and access to secondary or tertiary care providers is important should not live in rural areas.

PROVIDERS/RESOURCES

If you can afford to live in a rural area and pay for ongoing health care, the provider of that care may not be able to afford to treat you. Our national system of reimbursement is constructed on volume and averages. The DRGs which drive hospital reimbursement today are based on average care. For some illnesses, a given patient may require three days of hospitalization or seven days, and the reimbursement is capped at five days. In a large hospital which sees many patients with that illness, over time the number of patients requiring three or seven days will even out, and patient flow may begin to approximate the distribution on which the payment cap is calculated. In a small community hospital which may see only half a dozen such cases per year, the patient flow has no chance to approach that distribution. If all six patients, by chance, happen to require seven days of care, the hospital loses money. If similar conditions hold across all diagnostic groups, the hospital is in serious trouble.

Life-saving technology, a high cost option, is also spread across volume of patients. A piece of equipment which costs $500,000 and is used to treat 50,000 patients during its effective life is less costly per episode then if it is used to treat only 10,000 patients.

Similarly, an obstetrician who assists in the delivery of 250 babies each year, paying the same liability insurance premium as an obstetrician who makes 100 deliveries, is more likely to be able to spread the cost of that insurance across patients without placing the cost of delivery outside the reach of some patients. In rural areas, a family practitioner who is trained in uncomplicated obstetrics may have been the only resource available last year. In 1988, such a provider, looking forward to only 20-30 deliveries, cannot afford to provide obstetrics due to insurance cost alone; at 25 deliveries per year, a $25,000 insurance policy becomes an unacceptable overhead expense.

Equivalent arguments can be made for the availability of health services along the entire spectrum. Rural communities are forced by scarce resources to choose between necessary services. In very small communities or sparsely-populated areas, the people may be forced to do without health services altogether.

DIRECTIONS FOR CONSIDERATION

Discussions of response should be designed to increase affordability and access to care for rural residents. Two approaches should be used in concert: assuring care for poverty populations while working to strengthen the health care system in ways which ensure that comprehensive health care can be accessed through entry points in rural areas. Several approaches have been and are being used by the federal government and state/local officials to encourage access to affordable care for rural residents. They include Community/Migrant Health Centers, the National Health Service Corps, Certified Rural Health Clinics, and hospital transition legislation, as well as discussions of equitable reimbursement for rural providers based on a re-examination of the original reasons for a rural/urban reimbursement differential. While some of these approaches are quite recent, many have a history of service which deserves re-evaluation with an eye toward improved services.

COMMUNITY HEALTH CENTERS

Community Health Centers grew out of the old OEO programs. Initial forays into rural areas occurred 20 years ago, under Health to Underserved Rural Areas (HURA) grants and Rural Health Initiative (RHI) grants. All remaining such grantees are now incorporated under Community Health Center (CHC) policies, with the same administrative guidelines and reporting requirements as all other CHCs.

Originally, funding for HURAs and RHIs provided more flexibility in areas of governance, clinical care and administration than permitted by CHCs. This same flexibility extended to the number of services provided. It was thought that rural programs could be operated with fewer services, and lower grant dollar levels, than larger health centers. At baseline, rural centers were typically smaller sites, with fewer providers, lower grant dollar funding, and fewer services. Typically less funding and effort was directed toward dental services, pharmacy, social services, preventive health education, transportation and outreach. An assumption made by such centers was that those services could be developed during the center's growth. But that has not proved possible. In fact, funding for all health centers has not even approached the increased costs of service caused by inflation alone. The current three year funding freeze, in fact, has threatened the existence of allied health services even at larger centers. In terms of rural needs, and the lack of other resources discussed above, both the theory of rural center establishment and the continued low level of funding have been in opposition to documented trends. Higher levels of authorized funding are necessary, even for those centers which exist, to meet rising costs and the increasing demand for services to the medically indigent caused by the rural economic crisis. Even more money will be necessary to permit expansion of this

much needed program into other rural areas which currently lack services.

CERTIFIED RURAL HEALTH CLINICS

The law permitting certification of rural health clinics is 10 years old. Low reimbursement caps have driven many such clinics to request decertification, and discouraged others from applying for certification. A program which was meant to increase flexibility of rural services, including payment for home visits and visiting nurse programs, while maintaining cost effective local provider access through use of midlevels, has withered on the vine. Congress predicted that approximately 2,000 clinics would be Certified by 1990, but there are only about 400 Certified Rural Clinics today.

And while the cap on reimbursed costs has finally been raised, administrative regulations and lack of knowledge about the legislation remain barriers to maintenance of existing clinics or establishment of new clinics. More work needs to be done to facilitate the ability of rural providers to obtain and maintain Certified Status.

NATIONAL HEALTH SERVICE CORPS

The NHSC has been discussed under the physician shortage heading. It should be noted that great need still exists in rural areas. Dismantling of the NHSC is a real blow to such communities. Several approaches to this problem have been discussed, and one or more federal/state incentives to rural practice will remain necessary for the foreseeable future if rural Americans are to be able to access the care they need.

HOSPITAL TRANSITION

Rural hospital face double jeopardy. Current inequitable reimbursement by Medicare, combined with low utilization, threaten the existence of hospitals in many rural areas. Transition of the hospital to a different facility that would continue to provide care to rural residents is not currently facilitated by either legislation or administrative policy. Efforts to provide that facilitation are occurring at the federal legislative level, but model state legislation and changes in federal/state administrative regulations are immediately necessary, as are changes in the DRG reimbursement formulae to recognize rural disadvantage in current regulations.

While no easy answer to rural health care crisis exists, specific initiatives as listed below would provide an initial attack on the problem from several directions. They include:

Given the ever-increasing shortage of health manpower in rural areas:

Congress should fully fund the National Health Care Service Corps Scholarship and filed placement programs as well as the Loan Repayment program in order to place urgently needed health care professionals in rural areas.

States need to take a serious look at reforming their existing health manpower programs to more effectively place health professionals in the neediest areas and ensure their retention over time.

Federal initiatives to states should be developed which would encourage states to adopt/reform health care practice statutes to allow for appropriate use of mid-level practitioners in primary care settings.

Federal and state reimbursement policies should foster incentives to attract and retain physicians and other providers in rural areas.

Federal efforts to market and provide technical assistance to enhance the number of Certified Rural Health Clinics should be developed.

Given the increasing number of uninsured rural residents and the lack of access to basic health care:

Congress should reauthorize Community and Migrant Health Center programs at levels of funding sufficient to enable current centers to meet necessary costs and provide for new centers in rural areas unserved at present.

Federal and state public officials should pursue private/public initiatives designed to ensure that Americans without health insurance are provided basic health coverage regardless of ability to pay.

Given the increasing crisis in malpractice insurance and its impact on access to obstetrical service and, ultimately, infant mortality in rural areas:

Model federal legislation as a guide to states now struggling to address the threat to service posed by rapidly increasing malpractice insurance costs should be developed along with incentives for states to address this problem.

Given the financial crisis facing many rural hospitals and the increasing number of rural hospital closures:

The Medicare program should replace the separate urban and rural DRG rates with a single rate for all hospitals adjusted for legitimate and current local cost variations.

The current wage adjustment in the Medicare DRG reimbursement formula should be refined to more accurately relfect the cost of professional labor for rural hospitals.

Federal and state public policy, reimbursement strategies and health care regulations should be designed to encourage hospitals to diversity and engage in a smooth transition health service facilities tailored to address the unmet health care needs for the local area.

Given the increasing prevalence of public health issues such as AIDS, infant mortality and homelessness in rural areas:

Flexible federal/state assistance for these public health problems should be designed to ensure programs are both responsive to the unique characteristics of rural areas and funded sufficiently to allow for flexible approaches.

While acknowledging the importance of research, assure that federal AIDS initiatives emphasize the necessity of community education outreach, prevention and early diagnosis and treatment for victims of AIDS.

States should embrace the options provided under federal legislation in recent years which would enhance the number of women and children eligible for Medicaid coverage in order to assure early access to health care and reduce infant mortality.

Congress should provide sufficient appropriations for the federal Health Care for the Homeless program to include provision of services to homeless people in rural communities which received minimal health care support during the first year of the Program.

Congress should ensure that homeless women, infant and children are eligible for the WIC program in all states.

Given that the priority public policy direction is focused on the needs of the rural health service delivery system in crisis, it is also recognized that practical research is necessary to assure a solid understanding of the nature and extent of the rural health care problems. Therefore:

There should be continued funding for rural health research centers through HRSA's Office of Rural Health Policy.

Additional funds should be provided to the National Center for Health Services Research to support studies on rural health services based on the research agenda developed last year under a Congressional mandate.

Some of these recommendations would improve health care for both urban and rural populations given the fact that rural populations and urban poverty populations share common problems. While it is not likely that rural populations will move *en masse* to urban areas, it is probable that increasing numbers of high-risk segments of the rural population will seek necessary but locally-unavailable care by traveling to the city. Such a migration of problem patients, including poor minority group members, AIDS patients, or high-risk mothers has already been seen in some areas. This places additional burdens on that portion of the urban health care system which deals with uncompensated care, at a time when it can least afford such an increase. Rural residents and urban uncompensated care or medically-indigent populations have similar problems. They can and should work together to effectively advocate for policy changes of mutual benefit. Medically-indigent urban residents also face provider shortages, facility closures, and inability to maintain access to care in the face of rising costs. Common interest indicates that workable policy decisions be sought by working together toward a goal of improved health for all Americans.●

50TH ANNIVERSARY OF THE NATIONAL SKI PATROL

● Mr. HATFIELD. Mr. President, 50 years ago, New York insurance broker Charles "Minnie" Dole founded the National Ski Patrol to serve the needs of disabled winter sports enthusiasts and to provide skier safety information. The organization has grown to a force of more than 24,000 volunteer and professional members.

Since the formation of the National Ski Patrol, the nonprofit organization has saved many lives and provided prompt first aid to thousands of injured skiers. Because its members must meet rigorous requirements, including 60 hours of advanced Red Cross instruction in everything from car extrication to childbirth, many more people than just those who ski have benefited from the National Ski Patrol. In recognition of the National Ski Patrol's dedication to service, it was granted a Federal charter by Congress in 1980.

The National Ski Patrol now operates in almost every State in the Union, as well as overseas. Its membership ranges in age from 15 to 70 and includes lawyers, educators, artists, business owners, high school students and many others. They can be found at work on the slopes providing the one thing they all have in common to those who need it, the willingness to help others. The familiar cross on brightly colored parkas is sign of welcome to disabled skiers as well as a

symbol of skier safety to everyone on the slopes.

Most of those involved in the National Ski Patrol are volunteers, who, in their spare time, learn the skills required to become and remain a patroller. In addition to the patrol of winter recreation areas, patrollers are called upon to help in emergencies such as avalanche and blizzard searches. They are continually taking refresher courses to assure that they will remain current on the latest first aid and disaster techniques.

Throughout its 50-year history the National Ski Patrol has continually worked to improve its services. From the establishment of a communications department to help distribute information to members, to the creation of a full-time professional division, the National Ski Patrol has been constantly changing, growing and improving. The National Ski Patrol's continued involvement in the National Avalanche Foundation earned them the responsibility of assuming administration of the foundation, which includes running the National Avalanche School to teach the fundamentals of avalanche science, protection, and travel techniques. The National Ski Patrol recently developed a Winter Emergency Care Program engineered to meet the special first aid needs of the patrollers with a program textbook soon to be published.

National Ski Patrol members use special emergency care and transport equipment and often transport skiers miles before they can access hospital facilities. The National Ski Patrol has been an integral part of skier safety and injury treatment for over 50 years and will continue to diligently serve the public for years to come.

Mr. President, the National Ski Patrol has proven to all of us how one group of dedicated individuals can make a difference in the lives of others. I urge my colleagues to join me in congratulating the National Ski Patrol for their 50 years of service and to wish them continued success for the next 50 years.●

CONVENTIONAL MILITARY BALANCE IN EUROPE

● Mr. WIRTH. Mr. President, the arms control debate brings us to consideration of the conventional military balance in Europe.

In Measuring Military Power, Joshua Epstein presents a thoughtful and helpful framework for analyzing the conventional balance.

Joshua Epstein believes that a static bean count of a potential adversary's forces presents a seriously inadequate assessment of war-fighting capabilites. He strongly emphasizes the need for a more dynamic evaluation, the need to raise the debate on the military balance to a higher level of analysis. To illustrate his approach to the problem, Epstein develops a case-study of the capabilities of the Soviet Air Force. After an initial look at the notable difficulties the U.S. has encountered in maintaining reliability in complex weapon systems, Epstein examines similar difficulties in the Soviet military. He concludes that the Soviets have significantly greater problems than the United States in absorbing new technologies and putting them to use in their fighting forces.

For Epstein, the key to measuring the true dimensions of the Soviet air threat lies in accurately gauging the relative rate of change between technological advances in aircraft and subsequent improvements in Soviet ground support capabilities. If the latter does not adjust with sufficient speed, a "maintenance gap" opens, reliability and sustainability suffer, and actual capabilities fall well short of the seeming potential. Based upon an extensive review of Soviet military journals, Epstein believes that the Soviets face a far greater "maintenance gap" than the West.

He sees the root of the problem in a military bureaucracy which, as aircraft sophistication increased, failed to provide the necessary funds and manpower to allow adequate maintenance of the new equipment. Added to this, poor training programs (for both pilots and support personnel) and the Soviet penchant for centralized, inflexible, and detailed regulations lead Epstein to view the Soviet Air Force as a less formidable adversary than a simple inventory of its aircraft would suggest.

From these observations, Epstein moves on to construct a detailed methodological model to demonstrate how "dynamic" factors which affect the war-fighting capabilities of a military force can be analyzed and evaluated.

I would like to submit for the RECORD, the preface to Mr. Epstein's book, which provides in brief for the essence of his arguments. For those with the time and inclination, I heartily recommend perusal of the full volume.

The preface follows:

MEASURING MILITARY POWER—THE SOVIET AIR THREAT TO EUROPE

(Joshua M. Epstein. Measuring Military Power, Princeton, NJ: Princeton University Press. 1984.)

PREFACE

The single most fundamental assumption concerning the European military balance is that of Soviet conventional superiority. That assumption clearly conditions Western thinking on the need for theater nuclear forces; it represents the basic constraint on America's freedom to shift forces to other regions, such as the Persian Gulf; it dictates the bulk of U.S. and Allied defense spending; and it colors diplomacy at virtually all points of political competition between East and West. That the Soviets enjoy conventional superiority in Central Europe is among the most important assumptions, not merely in defense policy, but in world politics today.

Is that assumption warranted? The prevailing level of defense debate is inadequate to answer this question.

Everyone would agree that superiority entails the capacity to achieve concrete military goals such as the destruction of specific targets or the occupation of certain territory. Claims that the Soviets are superior, therefore, assert that certain tangible, statable military goals would be achievable by them were deterrence to fail. Superiority claims, in short, are claims about wartime effectiveness about performance in the execution of wartime missions, about outputs.

Virtually the entire defense debate, however, concerns itself not with wartime outputs, but with peacetime inputs—static inventories of men and machines. Negligible attention is paid to the operational factors involved in taking those peacetime inputs (e.g. tanks planes) and producing a wartime output—achieving any specific military goal.

In those rare cases in which basic operational factors (e.g., skill flexibility, coordination, sustainability) are noted at all, they are usually left hanging, or are tacked on to an underlying "bean count." Very few attempts are made to integrate inputs (i.e. numbers of tanks, planes, etc.), technological factors, and operational factors in such a way that they can be brought to bear on output. Recognizing that each of these must be a component of analysis, their isolated treatment simply cannot come to grips with the real issue: Given a specific Soviet threat (a postulated attack, or campaign) how does one arrive at a reasoned judgment as to its plausibility; it is plausible that the Soviets could successfully execute the postulated attack?

This book tries to suggest a general approach to that question, a way of thinking systematically about it. It does so not by attempting to assess all conceivable Soviet threats, but by doing a close and careful job on one. The mathematical framework developed to analyze that threat, though it can be generalized is not applicable to every other threat. But the considerations at work in devising and applying it are completely general. Those are the book's methodological contributions.

By their application, it offers an assessment of the Soviet offensive tactical air threat to NATO, now a critical aspect of the European conventional balance. The book thus takes an important step in the direction of a more meaningful, dynamic assessment of the balance of power in Europe, and hence, in the world at large. That is its military contribution.

Contrary to popular assumption, military analysis and political insight are not mutually exclusive. In fact, to assess Soviet capabilities in a rigorous way, one is compelled to examine Soviet politics in the military sphere. In arriving at its military judgments, the book reveals an intriguing and colorful side of Soviet politics that has received virtually no attention in the West—a Soviet "subsystem" whose military importance and political vibrancy make it a promising area for future research. That is the book's political contribution.

The discussion also raises some serious questions about the efficiency—indeed, the definition—of "Soviet defense production" and about the efficacy of Soviet military modernization more generally. At issue, finally, is the capacity of Soviet institutions to change, to adapt, when technological

progress demands it. Or, as Marx himself might have framed the question, "Can Soviet relations of production evolve along with the forces of production themselves, or will there be deepening 'contradictions' between the two?"

Since, in this case, the productive output is military capability, one might conclude that such "contradictions of communism" must be an unqualified good for NATO. To be sure, Soviet problems present the Western Alliance with exploitable military vulnerabilities. But there is also a definite sense in which the Soviets' very deficiencies make them more, rather than less, dangerous militarily. Those deficiencies, the offensive (perhaps destabilizing) inclinations they inspire, and the deep Soviet dilemma they produce, are set forth in what I hope is a novel reading of Soviet military doctrine.

Returning to the book's main thrust, the assessment of current Soviet capabilities, it may avoid unnecessary confusion to address at the outset some of the common criticisms of contingency analysis (the assessment of concrete, specific threats) and the application of mathematics to it.

In the Introduction, a specific Soviet offensive air attack is presented for analysis: definite targets in NATO territory (air defense weapons, NATO airbases, communication nodes, etc.) are set forth, and their conventional destruction is posited as the immediate goal of Soviet tactical air operations.

As it happens, this is a contingency of widespread concern. But, presented with any such threat, it is always legitimate to ask: "How do you know that the threat you've posited is the 'right' one, the attack the Soviets would try to execute?" I don't know, and short of war itself, I cannot know, nor could I verify the "rightness" of any other attack that might be postulated. Indeed, one of the deeper ironies of this entire business is that, precisely in the event that our selection of contingencies, and our planning against them, are correct, we'll never "know" it, because they will have deterred war!

But, just for the sake of argument, suppose we did know precisely the attack the Soviets would attempt to execute were deterrence to fail. The current level of debate would still be inadequate to assess that threat. And since the Soviets are not in the habit of providing such intelligence, one is forced to postulate specific threats and assess their plausibility. If the threat before us can be analyzed, then the analysis can be expanded to include others, until the entire spectrum of plausible Soviet threats is identified. Those who would prefer to begin that process with a different threat than the one analyzed here are welcome to do so. If this book succeeds, its methods will be equally applicable to that threat.

Nevertheless, the more "strategically" oriented would claim that contingency analysis—the focus on specific threats—is myopic and misguided per se. It misses the forest for the trees: "I don't care about specific threats," these critics will say, "I care only about the global balance of power."

So do I. I just don't know how to evaluate it without recourse to contingencies. Forests, after all, are made of trees; if one can be felled, maybe others can. This contingency may be the "wrong" one. But if its analysis proves to be possible, perhaps the same approach can be successfully applied to others—theater by theater, contingency by contingency—until the "global" spectrum of plausible threats is identified. As a start, the threat before us will suffice; the procedures developed will allow continuing on to other threats if that is desired. But the refusal to start anywhere (the "global-only" perspective) should certainly not be accepted as the equivalent of having finished.

Another evasion of military analysis has gained currency and deserves note. Its various formulations all reduce to the following claim: "Because the perception of Soviet capabilities is important politically, examination of the capabilities themselves may be dispensed with."

Certainly, perceptions of Soviet capabilities are important politically. But that rather unstartling observation hardly frees one from the problem of military analysis. On the contrary, precisely because perceptions matter, it is of the utmost importance to correct our perceptions if they are wrong. I don't know of any way to check the accuracy of our perceptions without examining their objects—the capabilities themselves—as rigorously as possible.

Obviously, diplomacy is not, and should not be, the slave of military analysis; military decisions cannot be made in a diplomatic vacuum. But that hackneyed admonition is no license to proceed with diplomacy in a haze of unexamined military perceptions, or to unquestioningly pander to erroneous ones.

The domestic political variation on the same theme generally runs as follows: "Defense decisions—with or without analysis—are politically (or economically motivated, and since 'it's all politics' anyway, why go to all the trouble of analysis?" Because the outstanding question remains: Which policy deserves to be advanced and supported in that political arena? Merely to observe that "it's all politics," or even to describe those colorful politics in bureaucratic detail, does not begin to address that more compelling question.

It wouldn't be as compelling were there some "invisible hand" to guarantee that the competing interests of politicians, defense industrialists, and the military services (to name a few) would somehow converge in a force structure that efficiently satisfies the nation's military needs. But there is no such mechanism in America's "marketplace of defense," and in its absence, there is no alternative to planning. In planning for deterrence, the first question is that of the potential adversary's capabilities—not his peacetime inputs, but his wartime outputs.

Lacking such assessments, the adequacy of one's own capabilities cannot be judged, locally or globally: Deficits between wartime requirements and current capabilities, in turn, cannot be measured; and the relative attractiveness (politically as well as financially) of feasible corrective policies therefore cannot be gauged. In short, deterrent planning, defined as the derivation of wartime requirements, is not possible without threat assessment. It is toward that larger undertaking that this book, by both its methods and results, is directed.

While accepting these arguments for contingency analysis, many will still regard its quantification as a foredoomed quest for certainties in a world of chance. To be sure, anyone looking for certainty in this business would be doomed. But that is not the goal of quantification; mathematical statements are not presented as mathematical laws any more than judgments otherwise arrived at are presented as eternal truths.

Recall the question highlighted above: Given a specific Soviet threat, how does one arrive at a reasoned judgment as to its plausibility? The critical words are "judgment" and "plausibility." Obviously, the threat's execution is possible. Technically, any physical event is possible (i.e., there exists some probability). But not all possible events are plausible. If we did not draw this distinction all the time, we would live in constant terror of being struck by lightning, eaten by lions, or carted off to alien worlds: all possible, but none terribly plausible.

While it is possible that the Soviets' capabilities are literally boundless, none of us really finds this plausible either. No one who did could consistently advocate any expenditures on defense since, if the Soviets were perceived as literally and inalterably omnipotent, there would be no reason to spend a dime! Since no one is advocating that the Western Alliance stop spending, there must be a consensus that some upper bound on Soviet capabilities exists. If we agree—as in fact we do—on its existence, then how can we estimate it?

Needless to say, statistical confidence of a sort that might be obtained from a random sample of NATO-Warsaw Pact wars is (thankfully) unattainable. Though data exist on a variety of much narrower subproblems, all macrolevel threat assessments rely on judgments of plausibility.

The goal of quantification therefore is not to eliminate judgment; nor can any method ensure that judgments will be right. The goal is to ensure that judgments are examined against the most explicit criteria of plausibility that can be erected on the limited information base available. It allows one to ask clearer questions: "With what assumptions would this threat's execution be consistent? Are those assumptions plausible to me? What, in fact, am I assuming when I make a judgment on threats?" The approach allows one to identify and to pull out one's often unrecognized assumptions and look at them, ask about them, and debate them. It does not purport to eliminate uncertainty, but to identify it in such a way that its consequences can be gauged and, where possible, its extent reduced.

The main point is that analysis seeks neither to preclude what is always possible nor to attain confidence in the statistical sense. Rather, it is condemned to the realm of plausibilities and, as such, is a tool of (and not a substitute for) judgment. Basically, the entire exercise is in the spirit of Socrates' dictum: "Know thyself." If you know yourself better—if your judgments are more reasoned—for having done it, then it was worth doing. In that sense, military simulation is a type of 'gedanken', or thought, experiment.[1]

Many of the usual qualms with quantification arise because the wrong goals are presumed (often by practitioners as well as critics). Other common criticisms of mathematics, however, rest on an unfair double standard, as Frederick William Lanchester observed:

There are many who will be inclined to cavil at any mathematical or semi-mathematical treatment of the present subject, on the ground that with so many unknown factors, such as the morale or leadership of the men, the unaccounted merits or demerits of the weapons, and the still more unknown "chances of war," it is ridiculous to pretend to calculate anything. The answer to this is

[1]A general mathematical structure for all such exercises is presented in Appendix D, with some general observations on the duality of threat assessment and force planning.

simple: the direct numerical comparison of the forces engaging in conflict or available in the event of war is almost universal. It is a factor always carefully reckoned with by the various military authorities; it is discussed ad nauseam in the Press. Yet such direct counting of forces is in itself a tacit acceptance of the applicability of mathematical principles, but confined to a special case. To accept without reserve the mere "counting of the pieces" as of value, and to deny the more extended application of mathematical theory, is as illogical and unintelligent as to accept broadly and indiscriminately the balance and the weighing-machine as instruments of precision, but to decline to permit in the latter case any allowance for the known inequality of leverage.[2]

In other words, the bean-counting detractors of mathematics in fact have a mathematical model, namely, that the relative effectiveness of forces in war, f(r), equals their peace time numercial ratio, r. Yet, without providing any compelling argument in support of that particular model, the bean counter feels no compunction in dismissing all competing models out of hand, merely on the ground that they are mathematical, when they are no more "mathematical" in principle than his own!

But, even granting all of this, there is one obvious question that deserves an answer: What about Soviet data? How does one obtain it? How can one proceed without it?

In some cases, reasonably trustworthy estimates are available. In many important cases, of course, they aren't. But, again, why jump to the conclusion that perfect measurements are necessary to address the problem at hand? What degree of precision is really required to do the job? The job is to establish a plausible bound on Soviet capabilities. To do that, it is sufficient to use values the Soviets are unlikely to exceed. Those may be the "wrong" numbers, but they will err on the side of favorability to the Soviets. If, on those assumptions, the threat is not plausible, then the "right" numbers would only render it less so.

Naturally the question arises. "How can you find numbers the Soviets are unlikely to exceed without knowing the real Soviet numbers to begin with?"

In the first place, it is possible to adduce the inequality of two numbers without knowing either. We do it all the time. We can say with confidence that Sam is taller than Ivan without knowing either's height. And, if we knew Sam's height to be six feet, we could say with equal confidence than Ivan was less than six feet tall without knowing his height. And so it is in this case. We often don't know Ivan's numbers, i.e., the Soviet numbers for certain variables. But we can often find an analogue for Sam, whos numbers we do know to a reasonable degree of accuracy.

For example, we do not have data for Frontal Aviation's[3] air-to-ground munition accuracy. But we do know the main factors upon which the value depends. They include the technology itself and the skill of the pilot, the latter being a function of training time and the quality of training, among other things. What we lack is an analogue for Sam. In this case, Uncle Sam will do.

There is no evidence that the United States is behind the Soviets in the relevant areas of technology, notably avionics and munition guidance. As for the determinants of pilot skill, the U.S. pilot flies roughly twice as much as his Soviet counterpart. Although shackled by various factors, U.S. pilot training is certainly no less realistic than Soviet. The former has incorporated the lessons of far more aerial warfare experience than the Soviets have logged since World War II. And, in retaining skills, the U.S. enjoys the benefits of simulators far in advance of those the Soviets are reported to possess; highly sophisticated computing and display technology, for example, is involved. Finally, Sam can learn from the winners in the Middle East, while the Soviets must glean their combat insight from the losers.

Where, in any of the areas that would determine accuracy, do the Soviet enjoy an advantage over the U.S.? In the technology? In any of the factors (training time, training quality) responsible for pilot skill? By what miracle of efficiency, then, would the Soviets come out with a value higher than the U.S. value? Is it plausible that they would? Not in my judgment.

So, in this case, Ivan is no taller than Sam. But, for bounding purposes, we'll assign Ivan Sam's height. It is not plausible that Soviet accuracy should exceed American. Thus, for bounding purposes, it will suffice to assign the Soviets the American value. Indeed, we will begin by assigning Soviet Frontal Aviation an average hit probability of 0.75, a value that most American planners would regard as implausibly high for the U.S.

Is that the "right" Soviet value? Probably not. But is it unfavorable to the Soviets to use that value? Not in my judgment. And if, on assumptions of that sort, the Soviets still fail to execute the attack, then surely, on more "realistic" assumptions, they would fall even shorter of the mark.

This is why the book opens with a discussion of American tactical air modernization and its problems, so that enough American information is available to make this type of paintaking comparision for each of the Soviet variables where data is scarce. As a critique of the U.S. case, the chapter may be incomplete, but that is not its function in the book. Its function is to facilitate Soviet assessment by the above approach. While the book's interior chapters are of political interest in their own right, that comparative procedure is their ulterior motive, too; they are qualitative, but they perform a quantitative function and should thus be read on two different levels.

The numerical judgments thus made are then plugged into equations to produce curves of target destruction and force attrition over time. The equations relate inputs to outputs and capture one of the obvious features of the problem. One that escapes most discussions: its dynamic aspect. After all, we do envison number of planes (each carrying numbers of munitions, and supported by numbers of personnel), flying numbers of missions (sorties) per day for some number of days, all against some number of targets defended by some number of NATO combatants.

How do I "know" I've got the "right" equations? I don't. But just as in the case of the Soviet numbers, why assume that the "right" equations are required to make a reasoned judgment on bounds? As long as they are not biased—by their algebraic form—against the Soviets, then they will suffice.

So, for example, the simulated Soviets enjoy perfect weather conditions (excluded from the equations), even though the real Soviets would be imprudent to assume them. No constraints on the range of tactical air planes complicate our bounding equations, though they might well complicate the Soviet planner's life. Aerial reconnaissance and damage assessment ("what's already been hit") are, by exclusion, conducted with perfection by the simulated Soviets. As we shall see, however, the real Soviets express serious concern about difficulties in each area.

Besides omitting many variables, others known to be time-dependent are held constant, and at very high initial values, in our equations. For example, the above-noted Soviet air-to-ground accuracy, initially set at 0.75, is impervious to degradation, even though precipitious deferrals of aircraft maintenance are sustained for days at sortie rates (missions per day) of six, higher than would be plausible in the U.S. case, and in a punishing wartime environment.

By their algebraic form, our equations also award the Soviets constant returns to ground support personnel in generating sortie rates, even though it is clear that at some point, diminishing marginal returns would set in.

These and a host of other such simplifying assumptions are made. Unrealistic? Yes. Unfavorable to the Soviets? Again, not in my judgment. Though the book's interior chapters provide evidence for those judgments, one may of course disagree. But let the methodological point be clear; as long as they err on the side of conservatism (i.e. favorability to the Soviets) then even the wrong numbers, applied in grossly approximative equations, will still address the right question: is the threat plausible?

If, on those conservative simplifying assumptions, it isn't plausible, then on more "realistic" assumptions, it should appear even less so. Or, to put it more pointedly, in order to discredit the conclusions it will not suffice to point out that "unrealistic" assumptions have been made; that is admitted. Rather, one has to show where those admittedly unrealistic assumptions have been unfavorable to the Soviets. How much more favorable to the Soviets would the assumptions have to be in order to alter the main conclusions? And are those assumptions, in fact, plausible?

Basically, the idea is to give the Soviets the benefit of the (often considerable) doubt, and see what happens. Certainty is a will-o'-the-wisp, judgment an ever-present hobgoblin, and so one does what hard-nosed common sense would indicate. In the face of imposing uncertainties, one makes assumptions explicit; with the available (often limited and imperfect) information, one tries to draw inferences that are consistent with those assumptions. The assumptions should then be varied (in sensitivity analysis), lest they prove wrong, as well they may, so that the consequences of irreducible uncertainty may be gauged. And, depending jointly on (a) the degree of uncertainty outstanding and (b) the sensitivity of one's conclusions to it, one buys hedges.

The method is not at all new and, in fact, it isn't "mathematical" in principle. It has claimed various epithets throughout history, but they have all been names for the same thing: facing up to the problem and trying to be rational.●

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[2]Frederick William Lanchester. *Aircraft in Warfare* London: Constable and Company 1916. pp. 46-47.

[3]Frontal Aviation, a separate Soviet service, is the offensive arm of the Soviet tactical air forces.

INFORMED CONSENT: MASSACHUSETTS

● Mr. HUMPHREY. Mr. President, the free flow of information is something we hold sacred in a democracy. Yet, every day women seeking abortions are denied basic information concerning the nature of risks associated with this procedure. S. 272 and S. 273 would guarantee women the right to informed consent in facilities performing abortion. I urge my colleagues to support these two bills. I ask that the letters from the State of Massachusetts be inserted in the RECORD.

The letters follow:

DEAR SENATOR HUMPHREY: Why did I have an abortion? Selfishness and lack of understanding covers a lot of ground; but if someone shared the pro's and cons with me and if I knew I could have a premature baby later, miscarry, try suicide 3-4 times, be institutionalized, and hide the hurt in a bottle (all of which I experienced), I would never have had an abortion.

Pro-choice people told me it would be over in five minutes and never told me that they would know if it was a boy or girl and that fetus meant "young one."

Fifteen years have passed, and the last six years knowing Jesus has forgiven me have been my source of strength as I share with others the lies surrounding the abortuaries.

It is rewarding to see the results of mothers giving birth to their "young ones" through the WEBA (Women Exploited By Abortion) ministry, and living happily guiltless ever after.

Love and Prayers,

ANITA TEXEIRA.

TO MEMBERS OF THE U.S. SENATE:

As a woman who had an abortion as a young teenager and suffered greatly, I would like to address the concept of "prochoice" as it relates to Senator Humphrey's "informed consent" bill.

The term choice, as used to justify legalized abortion, has three assumptions. The first is that a person has enough information to engage in a reasonable decision making process. The second is that undue coercion is not involved, and the third is that a person has sufficient maturity and competence to consider the consequences of a decision.

I have often thought about how my abortion could have been prevented. The primary deterrent would have been to have had basic information about fetal development, the abortion procedure, and possible complications. At sixteen, I had no knowledge about any of this and was under considerable pressure to have an abortion. I sought to get more information from the family planning counselor and physician but was only told that the baby wasn't alive, that emotional problems were nonexistent, that there was no risk to my future childbearing potential, and that women were much more likely to die or be sterile if they carried their babies to term than if they had first trimester abortions. This was the misinformation I was given to consider when making a "choice" for abortion.

Sixteen years later, I still find it extremely distressing that I was so misinformed—that I was denied accurate information about such an important decision. I am outraged that women continue to be denied accurate and complete information when considering abortion when the doctrine of informed consent requires that all potentially relevant information be presented to a patient for any other surgical procedure.

I beg you to consider what it is like to have had an abortion and then see a picture of a developing unborn baby, or worse, pictures of babies who have been killed by an abortionist's tools or chemicals. Some women even suffer the extreme trauma of seeing the remains of their own baby after an abortion. The woman realizes that a fertilized egg or piece of tissue wasn't removed from her, but that a developing baby, her own child, was deliberately killed, and that her womb was the site of that killing. The horror of the moment of this realization is indescribable.

The other two implications of the term "choice"—lack of coercion and adequate maturity and competence are also often severely compromised in a decision for abortion. I am sure you have heard many letters from women who were under extreme pressure from others to abort. These women were certainly not being given the opportunity to freely choose among options. I'm sure you have also heard from women who had abortions when they were very young, or under extreme stress, making well thought out decisions impossible.

I suggest to you that it is crucial for women in these situations to have adequate information about prenatal development and abortion so that they have some protection against those who would coerce them to abort or take advantage of their youth, circumstances, and lack of knowledge. I urge you to support Senator Humphrey's bill requiring informed consent so that women are not denied crucial information in the name of "choice".

Sincerely,

HOLLY TRIMBLE,
Massachusetts Representative,
American Victims of Abortion.●

TWO HUNDRED AND TWENTY-FIFTH ANNIVERSARY OF SHARPSBURG, MD

● Mr. SARBANES. Mr. President, it is my great pleasure to bring to the attention of my colleagues in the U.S. Senate the celebration of the 225th anniversary of the city of Sharpsburg, MD. Surrounded by two national parks, this unique community in the western part of Maryland with a population of 721 has a unique history, adding national importance to this celebration.

Sharpsburg was the sight of the bloodiest battle of the Civil War, resulting in more American deaths and casualties than any other battle before or since. The Battle of Antietam, also known as the Battle of Sharpsburg, is perhaps the town's most noted historical event but its history is much richer than may be suggested by one 15-hour battle.

Soon after the French and Indian War, in the year 1763, a pioneering lawyer from Annapolis named Joseph Chapline founded the town of Sharpsburg, naming it after his friend, Gov. Horatio Sharpe. The town was laid out on a 300-acre piece of land 1 mile east of Chapline's estate, Mount Pleasant. Tobacco had been previously cultivated on the sight. Ceremonies for the inauguration of the town were held on July 9 because of the astrological belief that the 9th was the most fortunate day of the month. One of the lots was used as a trading post. After being the sight of turbulent fighting during the French and Indian War, Sharpsburg residents lived in peace with the Indians, perhaps the earliest example of the town's strong commitment to human rights, later demonstrated by the establishment of John Brown and his followers in the town. It was in Sharpsburg that the famous raid on Harper's Ferry slavery supporters was planned.

In 1765, on a 6,352-acre tract of land that he received as a result of his efforts in the French and Indian War, Joseph Chapline commissioned the construction of the Antietam Iron Furnace. Iron ore was brought up on flat river barges from the quarries that surrounded the sight of the furnace. These furnaces produced the supplies that kept Gen. George Washington and his troops armed during the Revolutionary War. Shot, ball, cannon, and small fire arms were fashioned at Chapline's furnaces.

Religious edifices also played an important role in the landscape and history of Sharpsburg. The Lutheran Church of Sharpsburg was the first church to be built in the town. It was erected on a site deeded by Joseph Chapline in 1768. Later that year, another church was raised on Chapline land. This one was given to the German Reform Presbyterian Group and included enough ground for a small cemetery. The following year saw the first school in Sharpsburg located in this church. Both churches later served as hospitals to tend the wounded during the Battle of Antietam.

At the turn of the 19th century, Sharpsburg showed an increased population and, as a result, a greater availability of goods and services. Inns, taverns, stores, medical facilities, a post office, roads, public schools, a stage line, and horse racing, a very popular pastime in the region. In 1820, the population was 625. It grew to 1,300 by the time of the Battle of Antietam.

Alternately called the Battle of Sharpsburg, it was the bloodiest single-day battle in American history; 26,134 dead and wounded. The battle ended the first attempt of Gen. Robert E. Lee to advance the Civil War into the North. Gen. George B. McClellan was in command of the Federal Army of the Potomac that succesfully repelled Lee's Army of Northern Virginia. The battle raged on from 6 a.m. to 5:30 p.m., involving 40,000 Confederate and 87,000 Union soldiers.

At dawn Union Gen. Joseph Hooker began fire on Confederate troops led by Thomas J. "Stonewall" Jackson.

From that moment on the fighting continued at a frantic pace. At about 7 a.m. Jackson received reenforcements and was able to drive the Federals back. Union soldiers were then struck from both sides as Confederates took Dunker Church around 9 a.m. Nearly 2,200 men were killed or wounded in half an hour of battle. At approximately 9:30, Confederate and Union infantry met on an old road separating two farms. This orderly, sunken avenue became known as "Bloody Lane," scene of more than 5,000 casualties.

When the fighting ended at 5:30 p.m., Federal losses were 12,410 and Confederate losses were 10,700. In spite of their loyalties to one side or the other, the people of Sharpsburg answered the call of the injured without hesitation. They converted all public buildings into hospitals to treat the casualties on both sides. With the help of Clara Barton, participating for the first time under fire, they managed to save many lives and prevent the total number of dead from rising any higher than it had. The men of the town spent the day after the battle burying the dead and trying to return the town to normal. The goodwill of the town could have been an act of thanks as not single civilian life was lost.

A quiet and unassuming town, Sharpsburg had only four streets with names by 1881. Today, it has adopted modern amenities, yet it has not lost any of its charm nor any of its history. New families move in from nearby cities to restore the historic homes. The site of the battle was declared a national battlefield and President Johnson gave an address making the burial place of the dead from the battle into a national cemetary. Many tourists each year visit these two memorial sites, learning about the town of Sharpsburg and the battle that took place there 126 years ago.

So Mr. President, I ask my colleagues to join with me in congratulating the people of Sharpsburg on their 225th anniversary and wishing them the best of luck for their next 225 years.

CONGRESSMAN STENY HOYER'S SUPPORT FOR INTERNATIONAL HUMAN RIGHTS

● Mr. SARBANES. Mr. President, later this week Beth Torah Congregation of Hyattsville, MD, will be paying tribute to Congressman STENY HOYER for his outstanding work on behalf of all those denied their fundamental human rights and religious liberties. I am pleased to join with them in expressing my profound respect and deep appreciation for STENY'S dedicated and continuing efforts to human rights at the top of our national agenda.

Although STENY HOYER'S interest in the subject of human rights did not begin with his Chairmanship of the Commission on Security and Cooperation in Europe, better known as the Helsinki Commission, it is there that he has distinguished himself as a national leader and voice of hope for all those denied their most basic freedoms. Under STENY'S leadership, the CSCE, which was created in 1976 to monitor compliance with the Helsinki final act, has been at the forefront of congressional efforts to identify human rights abuses in signatory nations and to work toward their resolution. Whether it has been about Soviet Jewish refuseniks, Ukrainian political prisoners, ethnic Turks in Bulgaria, Czech political dissidents, Soviet-American divided spouses, or national and religious rights activists throughout Eastern Europe, STENY HOYER has communicated our concerns to appropriate officials in a timely and effective manner, and has helped to focus congressional attention on the issue.

Since becoming Chair of the Helsinki Commission in January 1987, STENY HOYER has traveled extensively throughout the Soviet bloc countries, not only meeting with national political leaders to discuss general areas of concern and specific humanitarian cases, but also visiting those who have been oppressed and silenced, bringing them hope and support in times of deep personal anguish. While in the Soviet Union last spring, STENY personally delivered to Iosep Begun a resolution passed by the Maryland General Assembly calling for Begun's release, and conveyed the offer of a teaching position at the University of Maryland. STENY attended a Passover seder for Jews refused permission to emigrate to Israel, and organized several other meetings with groups of refuseniks. Prior to the December 1987 summit meeting, he participated in a live satellite broadcast to the citizens of the United States and the Soviet Union on the subject of human rights, and held a hearing on the Soviet Jewry struggle at which former refuseniks Vladimir and Maria Slepak, Natan Sharansky, Yuli Edelshtein, Lev and Inna Elbert, and Iosif Mendelevich testified. He followed that up by marching in the highly successful pre-summit rally in support of Soviet Jews, and then traveled to the Soviet Union in the wake of the summit to once again raise issues of concern. Just last week, STENY HOYER introduced legislation to designate August 1, 1988, as "Helsinki Human Rights Day," reasserting our Nation's commitment to the Helsinki process.

Because of the often random nature of persecution in the Soviet Union and Eastern Europe, it is difficult to know which of our actions are the most effective. Yet the consistency and sincerity of STENY HOYER'S voice of conscience has doubtless made him one of the most valuable spokesmen for the human rights movement.

Mr. President, the people of Prince George's County, MD, are very fortunate to be represented by such a dedicated advocate of human rights and freedoms. I am honored to join with Beth Torah Congregation as they recognize the tremendous contributions that STENY HOYER has made, and continues to make, in this critical area.●

MORNING BUSINESS

Mr. BYRD. Mr. President, there will be no more rollcall votes today.

I ask unanimous consent that there be a period for morning business, not to extend beyond 6 o'clock p.m., that Senators may speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DROUGHT

Mr. BOSCHWITZ. Mr. President, the drought currently grips a greater area of the United States than at any time since the 1930's. A majority of us are hearing stories of increasing problems in our States as a result of the continuing dry conditions.

Last week, my agricultural assistant, Mark Seetin, traveled across Minnesota holding meetings to gather information on the severity and impact of the drought. Through daily reports submitted to me, the seriousness of the situation became quickly apparent.

In northwest Minnesota, which is up against the Dakotas, where it is particularly dry, desperate farmers told of pastures of brown and shriveled grass, of having to feed cattle scarce and expensive hay normally used to overwinter livestock. He was told of livestock markets flooded with cattle as a result of high costs and unavailability of feed. As a matter of fact, what the animals were eating often caused them to lose weight, rather than to put on weight, because the feed lacked much nutrition. Our grain producers told of having potential for only half a crop—and that only with favorable moisture from now on. Sugar beet farmers told of greatly reduced yield potentials.

In central Minnesota, farmers told of rainfall levels of less than 1 inch since April. There is news that we may get some rainfall tonight, and it would be a blessing. While the corn and soybean crops were still surviving, they were only days away from significant losses.

Southwest Minnesota farmers, as those in other areas, wondered about the impact on farmers who have recently been through debt restructure. Farmers, lenders, and businesses are concerned about what impact a sharp drop in income will do to a debt-re-

structured farmer with an already tight cash flow.

As a matter of fact, one has to be concerned about the impact on all of rural America if the cash flow through rural America stops with the failure of these crops.

South-central and southeast farmers told of canning crop pea yields that were 20 percent of normal, with the hot weather threatening to end harvest altogether after a few more hot days.

Cattlemen, dairymen, and hog producers all told of rapidly declining meat prices, while their feed costs were exploding, going up by a factor of one and two, week after week. All in all, the drought has affected every aspect of Minnesota agriculture.

However, we face some risks in addition to the risks of nature that the drought entails. Among these risks is to rush headlong into the glaring television lights announcing legislative solutions to problems we still do not fully understand.

What are the issues which must be addressed immediately, such as emergency feed for livestock, or allowing grain harvest of set-aside acres, and what are somewhat longer term issues that are involved? Those intermediate- and long-term issues include consideration of the potential loss of deficiency payments to producers in drought stricken areas, as well as problems faced by debt restructured farmers which I mentioned earlier.

Language which I inserted in the 1985 farm bill allows the Secretary of Agriculture authority to pay the full deficiency payment to grain producers where average market prices exceed certain levels. Perhaps some fine tuning may be necessary to address specific problems caused by the drought, but the basic mechanism is there.

It is also perhaps there in the 092 provisions that we put into the 1985 farm bill and those 092 provisions are part of the general decoupling approach that I have to agriculture. We need to keep evaluating the need for any additional measures which may be necessary as we go along and not to try to anticipate either the weather or the extent of the drought.

My State of Minnesota has a broad base of high technology and manufacturing industries in addition to agriculture. But I continue to believe that not only its heritage and soul is found on its farms and small towns, but its economic base as well.

The economic base of Minnesota is found out there on the farms, because when agriculture hums, all of Minnesota hums. When crops fail as they are failing today in many parts of the State, Minnesota just does not do very well. Not only its economy, but the optimism and hope of its people suffer.

We need to take a lesson from our rural constituents. When times get hard, they pull together to solve problems. We must pull together to work hard at determining the scope of the problem and work together to address those needs.

I have served on the Agriculture Committee since I was first elected a decade ago. This drought could turn out to be among the most challenging problems we have faced in recent agricultural history. My work on the committee will continue to be my priority in the months to come.

I will have a drought report that probably will come out on a daily basis, Mr. President, a drought watch to assure my colleagues that they are abreast of the conditions as well.

I yield the floor.

MINIMUM WAGE IS MISGUIDED

Mr. SYMMS. Mr. President, I am pleased to be a cosponsor of the bill introduced by Mr. HUMPHREY on June 14, S. 2512, which would correct an injustice in our society—an injustice that creates a barrier to young people and other disadvantaged workers from obtaining jobs and becoming more experienced and more skilled, and therefore higher paid workers.

The barrier I am speaking of has been described as "cutting off the bottom rungs of the ladder, so that people with shorter legs can't climb up." This injustice is section 6 of the Fair Labor Standards Act, which makes it unlawful for someone to offer a low-productivity job to anyone and pay them wages commensurate with productivity.

Of course, there is no law that says anyone has to accept a low-productivity job. Nobody will accept one if there is a higher-productivity job for them. It will certainly be a great day in the progress of our society when all the jobs are high-productivity jobs. With labor-saving equipment and computers, which will be able to put "expert system" programs into the workplace, someday we expect all of the jobs in society will become high-productivity jobs.

Every American should be eager to work and to contribute to our economic system—but we have to give everyone a chance. It is only fair to people just starting off in life, and for those whose skills are lacking, to permit them to find work wherever they can, even if it is a low-productivity job.

It is sad, Mr. President, but there are people in this world who do not want everyone else to be better off. These malevolent people take pleasure at the misfortune of others—and for purposes of their own profit and their own economic advantages, they create barriers to economic progress and economic growth.

Of course, no one who is trying to inflict that harm on others will stand up and say, "Come help me do this mean thing to less skilled people."

Rather, these advocates of injustice cover their tracks with high-sounding moralistic words, such as "nobody should be poor" or "nobody should be disadvantaged."

So they advocate laws and regulations that simply make it impossible for disadvantaged or poor persons to survive by their own efforts. It is a cruel trick to pretend to oppose misfortune of others, but to advocate and impose conditions making it worse.

One particular group of people who have long supported racism and economic privileges aimed at keeping blacks out of the workplace are the labor unions of South Africa. Indeed when we look closely into the history of that unfortunate land, we find it was white union organizers who first demanded the government set up special "job reservations" for whites.

There is a very good analysis of this situation in the book by Prof. Walter Williams of George Mason University, entitled "The State Against Blacks." I strongly recommend Professor Williams' book to my colleagues, as an illuminating analysis of the ways in which the government itself has prevented the full economic and social participation of many black people in the modern world.

Mr. President, I ask unanimous consent that a brief excerpt from Professor Williams' book be printed in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

WALTER WILLIAMS, THE STATE AGAINST BLACKS

(Excerpt)

The notion that it is sometimes necessary for some individuals to lower their price in order that some transactions can occur is offensive to the sensibilities of many people. These people support the minimum wage law as a matter of moral conviction motivated by concern for equity in the distribution of wealth. However, white racists' unions in South Africa have also been supporters of minimum wage laws and equal-pay-for-equal-work laws for blacks. The New York Times reported that in South Africa, where the racial climate is perhaps the most hostile in the world:

Right wing white uniforms in the building trades have complained to the South African government that laws reserving skilled jobs for whites have [been] broken and should be abandoned in favor of equal-pay-for-equal-work laws. . . . The conservative building trades made it clear that they were not motivated by concern for black workers but had come to feel that legal job reservation had been so eroded by government exemptions that it no longer protected the white worker. [November 28, 1972]

To understand how job reservation laws became eroded requires only two bits of information: (1) During the post-World War II period, there was a significant building

boom in South Africa, and (2) black construction workers were willing to accept wages of less than 25 percent of wages paid to white construction workers. Such a differential made racial discrimination in hiring a costly proposition. Firms that chose to hire whites instead of black paid dearly—$1.91 per hour versus $.39 per hour. White racist unions well recognized that equal-pay-for-equal-work laws (a variant of minimum wage laws) would lower the cost of racial discrimination and thus improve their competitive position in the labor market.

Moral philosophers can get into unending debate over whether it is fair for some people to have to pay higher prices for what they buy than others and accept lower prices for what they sell (as in the case of labor services) than others do. But solid economic evidence shows that whatever the handicap, preventing people from lowering (raising) the price of what they sell (buy) tends to reinforce that handicap.

U.S. UNION SUPPORT FOR MINIMUM WAGE LAWS

As is the case in South Africa and elsewhere, unions in the United States are also the major supporters of the minimum wage law. While our unions have different stated intentions behind their support of minimum wage laws, one must always remember that the effect of policy is by no means necessarily determined by the intents of policy. But a good case can be made that the effects of the minimum wage law (high unemployment among low-skilled workers) are its intentions. This can be readily understood if we consider as economists do that for many productive activities low-skilled workers are substitutes for higher-skilled workers. And if high-skilled workers, through organizing, can reduce or eliminate the use of low-skilled workers, they achieve monopoly power and command higher wages. A numerical example can demonstrate the strategy.

Suppose a fence can be produced by using either one high-skilled worker or by using three low-skilled workers. If the wage of high-skilled workers is $38 per day, and that of a low-skilled worker is $13 per day, the firm would employ the high-skilled worker because costs would be less and profits higher ($38 versus $39). The high-skilled worker would soon recognize that one of the ways to increase his wealth would be to advocate a minimum wage of, say, $20 per day in the fencing industry. The arguments that the high-skilled worker would use to gain political support would be those given by any of our union leaders: "to raise the standard of living," "prevention of worker exploitation," "worker equality," and so forth. After the enactment of the minimum wage laws, the high-skilled worker can now demand any wage up to $60 per day (what it would not cost to hire three low-skilled workers) and retain employment. Prior to the enactment of the minimum wage of $20 per day, a demand for $60 per day would have cost the high-skilled worker his job. Thus the effect of the minimum wage is to price the high-skilled worker's competition out of the market.

Whether the example given here accurately describes the motives of labor unions' support of and expenditures made lobbying for minimum wages is not really at issue. The effects of union action do not depend on its motivation. That is, whether the union means to help or to harm the low-skilled worker, the effect is to price him out of the market. However, it is worthwhile to note that the restrictive activities promoted by unions do reduce employment opportunities and the income of those forced out of the market. This fact suggests that union strategies to raise wages of their members must be complemented by their lobbying for government welfare programs. The reason is that if not having a job meant not eating, there would be considerable political disruption. Therefore, unions have incentives to support subsidy programs for those denied job access.

The minimum wage law, as well as many other laws that have placed minimum prices on labor transactions, has imposed incalculable harm on the most disadvantaged members of our society. The absence of work opportunities for many youngsters does not mean only an absence of pocket money. Early work opportunities provide much more than that. Early work opportunities teach youngsters how to find a job. They learn work attitudes. They learn the importance of punctuality and respect for supervision. These things learned in any job make a person a more valuable worker in the future. Furthermore, early work experiences give youngsters the pride and self-respect that comes from being financially independent. All the benefits of early work experiences are even more important for black youngsters who go to the nation's worst schools. If they are to learn something that will make them more valuable in the future, they have to learn it in the job market.

Since the minimum wage law does incalculable harm to the nation's youth, the only moral thing to do is repeal it. Failing that, a national subminimum wage would be a partial solution.

INVISIBLE VICTIMS

Some of the political support for the minimum wage reflects self-interest. It is a way to eliminate, as we have discussed, low wage competition. Others lend political support to minimum wage legislation because of a real concern for the disadvantaged worker. They think that the poor are helped to live a better life. In one sense these people are correct. The less poor are made better off and the poorest poor are made worse off. But the truly concerned supporter of the minimum wage law cannot see this.

The real problem, both in the U.S. and other countries, is that people are not as much underpaid as they are underskilled. The real task is to make skilled those people who are underskilled. This is not done by merely declaring, "As of January 1, 1981, everybody's productive output is now worth $3.35 per hour." This makes about as much sense, and accomplishes about as much, as doctors curing patients by merely declaring that they are cured.

GEN. ROSCOE ROBINSON, JR.

Mr. SYMMS. Mr. President, I rise today to honor a great American, a patriot and a leader, and, by so doing, I also pay tribute to those young men and women who serve so well and so proudly in the service of our country.

Gen. Roscoe Robinson, Jr., began his career in the Army in June 1951. After 35 dedicated years of service, including the award of two Silver Stars for heroism in combat and the award of the Distinguished Service Medal, General Robinson retired in 1985 with the rank of general.

On this past Memorial Day, General Robinson was invited to address the past and present members of the 82d Airborne Division. I commend his remarks to my colleagues and ask unanimous consent that those remarks be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS OF GEN. ROSCOE ROBINSON, JR., FORT BRAGG, MAY 26, 1988

Secy. and Mrs. Marsh, Gen. and Mrs. Foss, Gen. and Mrs. Stiner, distinguished guests, troopers. I am delighted to have been invited to participate in this ceremony today. It is always a privilege to return to Ft. Bragg and observe the soldiers of the 82d ABN Div. and XVIII ABN Corps. I would like to give a special welcome to the combat veterans of the 82d who are present today—from World War I to Grenada—as well as other former members of the division who served during peacetime. I also want to extend my congratulations to the participants in the review this morning. It was spectacular.

The timing for this event is very appropriate. Last week our Nation observed Armed Forces Day. And next Monday is Memorial Day. During Armed Forces Day observances around the country we attempt to show the American people some of the activities of the military as we pay tribute to the thousands of servicemen and women who proudly serve our Nation. We show people; we show equipment; and through that combination we hope this great Nation—a commitment that runs deep in all of those who wear the uniform.

I am sure that most of you know that our Nation is in the midst of a celebration of the bicentennial of our constituion. Last September was the 200th anniversary of the signing of the Constitution, and next month on June 21 we will celebrate the 200th anniversary of its ratification. It is very appropriate to mention the Constitution when we discuss American servicemen and women. The Constitution provides the framework of our form of Government and guarantees the liberties that we enjoy. The first official act of a member of the Armed Forces upon enlistment or commissioning as an officer is to take an oath to support and defend the Constitution of the United States. Thus the members of the Armed Forces swear allegiance to the Constitution, and through it to the American people. That oath is a commitment to defend our country, and a very binding one at that. It means that one is willing to die in defense of the principles that we love and value.

And that brings us to the Memorial Day observances in which we honor that special group of heroes who have died in service to country. For more than 200 years America has been a strong advocate of peace and freedom in the world. The benefits that our citizens enjoy today exist because of a strong and ready defense manned by members of the military services.

The 82d ABN Div. exemplifies that commitment to the defense of our Nation as well as any unit in our history. From its activation as an infantry division during WWI to the present, its soldiers have epitomized the principles of excellence. This division sets the standard—not just for airborne forces, but for the Army as a whole. The accomplishments of this division are well-known throughout military circles at home and abroad. In September 1984, while sitting in my office in Brussels, Belgium, a dutch MG serving with me at NATO HQS

walked into my office and said, "40 years ago today the 82d ABN Div. liberated my house in Nimejgin. And then they liberated my wife's house." In visiting many small towns in Europe, the mere mention of service in the 82d ABN Div, even though it may have been after WWII, brings immediate respect and admiration.

As we approach Memorial Day, when we pay special tribute to those who lost their lives in defense of our country, it is especially fitting that we honor those soldiers of this great division who gave their lives that others may enjoy freedom. And as we honor those soldiers, let us remember the soldiers who serve today. Soldiers like SSgt. Dugan and SP. Smith who were honored as division NCO and trooper of the year are just as committed as those who served before them. They are soldiers who train hard and maintain a readiness posture to deploy anywhere in the world to protect those freedoms that others gave their lives to protect. They have followed the example set for them by those who served in this division in years past.

Those of us who have seen war understand the hardships of war. But we also understand the necessity to maintain a strong military force to deter adventurism or aggression by a potential adversary. We owe no less to those who paid the supreme sacrifice.

Mr. SYMMS. I yield the floor.

CHRONOLOGY OF A CORPORATE LITERACY CLASS

Mr. HATFIELD. Mr. President, George Bernard Shaw once wrote: "The reasonable man adapts himself to the world. The unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man."

That unreasonable man, Mr. President, is Bill Gregory. An accountant from Portland, Bill Gregory did the unthinkable in Oregon in 1981: He bought a sawmill and plywood plant in tiny Glendale. The timber industry was in deep recession, and the rundown mill was on the verge of collapse.

Six years later, the mill had become profitable. The story of how it did is the story of an unreasonable man who believed more in his employees than in the experts, who believed more in common sense than in conventional wisdom. It is the story of a literacy class, a health clinic and a profit-sharing plan. And it is, far removed from the boardrooms and classrooms across this country where the decline of America has become the trendy topic of the day, a story about what it is that makes this country strong.

Mr. President, the story of Gregory Forest Products in Glendale, OR, is a story that should be told over and over again in boardrooms, classrooms, and cloakrooms. I ask unanimous consent that "Chronology of a Corporate Literacy Class" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

CHRONOLOGY OF A CORPORATE LITERACY CLASS

ABOUT THE COMPANY

Bill Gregory, a CPA for Arthur Andersen & Co. in Portland, surprised his associates and the Oregon wood products community when he bought a run down sawmill and plywood plant in 1981. The mill was the only economic base for the small town of Glendale, population 600, and had employed more than 400 workers.

Conventional wisdom said Gregory's purchase was ill-timed. The timber industry was deep into a recession, and timber purchasers labored under the burden of high-priced federal timber contracts they had purchased before the bottom fell out of the market for forest products. It looked as though the timber-based economy in Oregon was going to fall through the floor soon, and Gregory Forest Products seemed the first likely candidate to succumb.

Gregory's business plan was unconventional, but made sense. He told millworkers he needed their help to get the mill's equipment updated so they could reduce losses from their high-priced contracts by getting more lumber and plywood out of each log. Millworkers reluctantly agreed to give up one dollar of their hourly salary that was to be funnelled into equipment. In return, they would get their money back plus a percentage of the profits if the mill turned into a success.

As a result of mill efficiency improvements made in the depths of the recession, GFP returned to profitability in 1987. Millworkers reaped the benefits of the profit sharing plan and have since received thousands of dollars per worker per year.

In addition to modernizing his mills and sharing company profits with his workers, Gregory has gratefully turned back other benefits to the millworkers and community. The small Glendale school system received computers, and later, money to fund the industrial arts program when the local budget levy failed.

In the interest of getting better medical care, Gregory recently bought a local health clinic building where he's working to set up a health advocacy program. With the help of a physician and staff, millworkers will get health screening and advice on preventive health care measures which may avoid later medical crisis in their lives. They'll get help filling out frustrating and complicated insurance forms, and referrals to reputable doctors when they do become ill.

Gregory discovered that business is a partnership that thrives on more than bottom-line production figures and profit reports. GFP's profits, achieved through the cooperation of millworkers and management, are returning benefits beyond the scope of a paycheck.

Perhaps the most rewarding example of the cooperative spirit Gregory has tried to encourage in his company is its literacy program.

JANUARY 1987

Quality Control Supervisor Mike Babb wondered why one of the truck loaders in the veneer plant was slower and less efficient. The man often seemed to be getting the help of another worker to count loads, fill out forms and track production on the job.

A little investigation turned up the fact the truck loader was virtually illiterate. He was apparently equipped to drive a forklift, but unable to count well, to spell, and to communicate on paper. The man has been relying on his co-workers to help him do his job.

Babb started asking other mill supervisors if they had spotted any apparent problems with illiterate workers and found there were some who had varying degrees of difficulty understanding written material or writing anything themselves.

The implications of finding illiterate workers on the job were tremendous. If they couldn't read, they couldn't understand the manuals that came with new equipment as the company upgraded itself in technology; they couldn't understand written materials about safety hazards to protect themselves; they couldn't understand their union contracts that outlined their rights as employees; they couldn't fill out insurance forms to collect their medical benefits. Not only couldn't they help themselves, they couldn't help the company improve.

They would be at jeopardy of losing their jobs without decent reading skills.

After seeing a television commercial about literacy that showed a father unable to read his daughter a bedtime story, Babb wrote to the featured Washington D.C. address asking for more information about what the company could do to help its employees improve their skills.

MARCH 1987

Babb talked over his ideas with Gregory Forest Products owner Bill Gregory, and told him about the problem with some employees. It was apparent that the mill's own policy of hiring any able-bodied person, regardless of education, was only perpetuating the inclinations of some teenagers to drop out of high school for an apparently high-paying union job. Policy was changed to not hire anyone without a high school diploma.

Gregory had earlier made it company policy to pay for any employee's tuition for after-work courses at a local college, and he'd emphasized his support for education by offering $500 scholarships to any graduating seniors at Glendale who continued their education at an accredited school.

Other educational efforts had already been put into place at the mill. Gregory was frequently sending key people to seminars, or bringing in speakers for special subjects. Babb started a special training program for bright millworkers who appeared to have abilities for bigger things. All interested employees were invited to take part in technical training courses that offered seminars on apropos mill subjects such as electricity, hydraulics, and petroleum lubrication. The classes were set up in makeshift room in the purchasing department, strategically set between the sawmill and the plywood plant. Millworkers could attend seminars literally on-site, and not feel out of place in dirty work clothes.

A literacy class for millworkers seemed the next logical step. With the goahead from Gregory, Babb contacted Umpqua Community College, the county's 2-year college in Roseburg, and asked for help to set up a class with a UCC instructor.

APRIL 1987

Babb sent out a questionnaire to all GFP employees in Glendale, about 350 letters, asking if they would be interested in improving their reading skills with such a class. About 25 percent of the people responded, and 38 percent of those said, yes, they would be interested.

UCC set up a proposal to supply an instructor and instructional materials, charging GFP $25 an hour for the service. A learning lab was to be opened in the pur-

chasing department classroom three days a week for two hours each day.

GFP set out to buy some desks and classroom equipment.

Babb wrote to the local union leader, announcing the company's intention to start a class, along with the assurance that employees who came forward asking for help with their reading skills would not be targeted for dismissal. The union leader returned a letter affirming his support for the project.

Babb received a letter from Beth Hulsman of the Oregon Public Broadcasting Commission, saying she had been told of his interest in trying to do something about literacy in the workplace. She knew Bill Gregory and was excited about the prospect of the company starting a program. She invited them to speak at a conference on literacy to be held in May.

MAY 1987

UCC hired Ann Burney as instructor, who opened class May 22. About four millworkers came forward in the first week, but as they discovered they shared similar problems, along with the hope to improve their skills and confidence, the word got out in the mill that the class was "okay."

JUNE 1987

With suspicions about the class assuaged, another six workers came forward to work with the class. Many wanted to work for their GED, and some just wanted to improve skills they had left unused for years. Enthusiasm for improving skills seemed to go hand-in-hand with an increasing sense of self-worth, self confidence and satisfaction with their work at the mill.

JULY/AUGUST 1987

GFP's new class caught the attention of the local news media, and class members were beginning to see themselves featured in segments on the local channel's evening news broadcast or in news stories around the state. A network TV crew from NBC came to the mill for three days to do an end-of-the-broadcast news story shown on national TV.

Other employees, not enrolled in the class, were seeing that their mill was different than other mills; their mill cared about its people and was doing something about it. The class had succeeded in giving the mill and its employees an unexpected boost in morale that contributed to a company and community sense of pride.

TO DATE/JUNE 1988

The class has seen 28 workers come through its doors. Some have stayed over a long period of time and have successfully completed their GEDs. Others have worked less frequently, troubled by after work commitments, or other scheduling problems. Always, participants have the problem of trying to concentrate on class work after a full day on the job, sometimes overtime.

The class has evolved from three days a week, two hours a day, to four days a week, four hours a day. Instruction has been individualized, because of the vast differences in the skills of participants.

Cost of the class after one year, as of April 1988, amounted to $15,172. It should run about the same amount this year.

Computers have played a big role in the class. UCC purchased educational software that supported the kind of individualized work that the class had developed. Participants were finding that computers were interesting and fun, so many of them have purchased computers for themselves to use at home.

In doing that, millworkers have been able to share their new affinity with computers with their children at home, who can use the educational software and develop their own uses. This side benefit of the class may be enhancing the importance of education with the next generation.

What some people say is a dying industry, appears to not be dying but changing for the better. GFP has become a leader and innovator in the timber and wood products industry through Bill Gregory's unusual approach and point of view.

Where the timber industry and environmentalists have fought bitterly about timber supply and old growth, Gregory has taken the stance that some parts of the forest are indeed sensitive. He astounded his counterparts by asking the federal government to take back profitable timber that stood in highly visible or sensitive areas. While Gregory realizes that his company and the environmental organizations may have to agree to disagree on many issues, he has nonetheless invited leaders from environmental groups to tour the mill and meet with him so they could understand each other better and attempt to find certain common ground. As a result of such meetings, GFP recently supported legislation to designate certain Oregon rivers as part of the National Wild and Scenic Rivers System.

Meantime, the next generation of millworkers in the Glendale area are beginning to be affected by this growing new attitude. Educational values, mixed with a partnership approach to work, will go a long way not only toward making th industry more viable and successful, but toward enhancing the economic options and quality of life for the whole area.

SITKA COAST GUARD RESCUE

Mr. MURKOWSKI. Mr. President, there is a service organization in the United States and their slogan is semper paratus, and so they are. It is the U.S. Coast Guard service that is always ready. They are always there to aid and help and rescue whenever asked.

Recently, five coast guardsmen from the air station in Sitka, AK, were rewarded for their bravery. They were presented with our Nation's highest military award for noncombat heroism in an aircraft: the Distinguished Flying Cross.

Theirs is an incredible story, a story of courage which saved the lives of an Alaska fisherman and his young son, who was lashed to the back of the father.

I have some idea of what I speak, Mr. President. I had the pleasure and the honor of serving in the Coast Guard from 1956 to 1958 stationed in Sitka, AK, on the Coast Guard cutter *Sorrel* and later on the Coast Guard cutter *Thistle*. I know about the tremendous storms that can arise in a relatively short period of time and the exposure to the Coast Guard as they initiate rescue efforts when called upon.

But on the night of December 10, 1987, a very special rescue took place. A gentleman by the name of Jim Blades and his 6-year-old son, Clinton, were off Cape Edgecombe, 12 miles from Sitka, in their fishing boat *Bluebird*.

They were fishing for king salmon when a storm blew in. At its worst, the winds gusted up to 70 knots. The seas were 30 feet high.

As their fishing boat began to swamp, they called the Coast Guard for help.

Comdr. John Whiddon left with his crew of four in a helicopter. Accompanying were petty officer 2d class Jeff Tunks, Lt. Greg Breithaupt, petty officer 3d class Mark Milne, and petty officer 1st class Carl Saylor. They took off in a helicopter into the black of a very stormy night.

A little over an hour later, the episode was over but not without tremendous trials and tribulations.

Commander Whiddon said when he received the call about 7 o'clock that night at the Coast Guard Air Attachment in Sitka, the boat was taking on water and he doubted if it could maintain itself.

So the crew rushed down to their helicopter and the commander said as he started it up, immediately upon leaving Sitka, they were hit with 40-knot gusts. This, he said, "turned out to be an indication of things to come."

They next turned south out of Sitka, AK, flying into the blackness through heavy snow and icing to the point where their radar no longer functioned. Whiddon said they had absolutely no forward visibility.

They headed in the general direction of where the fishing vessel was known to be and where Blades indicated by radio that his boat was in the process of sinking and would be down in just a few moments. In the darkness ahead, they saw a flashing light. They homed in on the light from the *Bluebird* with their direction finder and pulled into a hover 60 feet above the water.

However, at that moment, they got hit with gusts estimated at 70 miles an hour. The commander indicated that it had pushed them back nearly a half a mile. Commander Whiddon estimated they were flying backward and out of control. In trying to stabilize his craft, the commander "overtorqued" his transmission and severely damaged the chopper's engine, yet it maintained its function and they were able to stay in the air.

The copter then moved back in and prepared for a rescue hoist. But there was no place to put the rescue basket down. Whiddon and the crew made three or four attempts and were unable to get the basket on the deck of the sinking vessel.

Backing off, Commander Whiddon talked again by radio to Blades on the *Bluebird*, telling him the only hope for rescue was if he and his son were prepared to jump in the water with their

survival suits on. At that time, they estimated the winds to be 70 or 80 knots and the seas at that time to excess of 35 feet.

Then Blades strapped his son to his chest and stepped off the back of the boat as it sank.

The Coast Guard helicopter then made four or five more attempts with the basket. But the wind kicked up each time and blew them back 40 or 50 knots two more times and they were unable to make the pickup. By this time, the cresting waves had filled Mr. Blades' survival suit with water and he and his son were completely immobilized.

It was estimated that after five more unsuccessful attempts, a decision was made on whether or not to put Petty Officer Jeff Tunks in the water.

As Tunks tells the story, "Commander Whiddon said, 'OK, Jeff, do you want to go in?'" He responded by saying, "It wasn't my best idea in the world, but I said, 'Sure, I'll go in and give it my best shot.'"

He is quoted as saying:

I got ready to go and as I looked down at the water, it looked like back where I came from when it would really rain, really hard and the creek beds would fill up and they would just be rushing by, taking everything with them. I thought to myself as soon as I hit that water, I'm gone.

Well Petty Officer Tunks was lowered into the water in a horse collar device to a point where he said, "I thought I was going to land on top of them." But the wind, which had bedeviled the operation from the beginning, once again made its presence felt, and Petty Officer Tunks went bouncing across the waves on his back. "I would estimate we went back maybe 75 to 100 yards," he said.

By the time he finally got out of the horse collar, Tunks said Blades and his son were nowhere in sight.

Tunks said:

I was really kind of nervous at this time thinking, now what are they gonna do, they got me in the water, we've got them in the water and we were nowhere near each other.

Commander Whiddon could see that Tunks had lost sight of the father and son. Tunks swam out in front of where the helicopter was and noticed that Whiddon had swung the nose light of the aircraft. Tunks said:

I could see where the light was hitting the water, so I began to swim toward the light—not knowing what I was going to find there, but hoping that they knew I couldn't see 'em and were trying to direct me to the father and son.

So I swam and swam until finally I saw them come up on the top of a wave and then the nose light flashed off the reflective tape on their suit. Then they disappeared into another valley of wave. I thought to myself, if they there now, they going to be here in just another minute or so. So I swam to the position where I thought they were going to be and sure enough, hooked up with them.

Then the helicopter indicated a pickup and, after three more tries, they got the basket to Tunks. He rolled the survivors into the basket and gave the pickup sign.

When the two Blades, father and son, were safely inside the helicopter, the basket was then sent down for Petty Officer Tunks. After the third attempt, he was able to finally grab hold of the basket and put himself in. Right then, the helicopter was hit by another gust. Once again, Tunks was dragged across the waves. He said he flew across the surface of the ocean at 50 or 60 miles per hour. At one point, when he hit the crest of a wave his mask was ripped off, his snorkle was ripped away and Commander Whiddon said he "honestly thought we'd done some serious damage to him. He hit with such force that it jarred the helicopter."

Eventually they were able to get Tunks up out of the water. But the basket started to swing wildly, at one point coming to within about a foot of hitting the underside of the helicopter before Tunks was finally pulled to safety.

All of this took 1 hour and 18 minutes.

Mr. President, these men would tell you, as they told me, that they were just doing their duty. A citizen called them for assistance and they provided it, as they are often called to do. But, Mr. President, without question this is a story of exemplary bravery, well deserving of the commendation they have earned.

We should take time, Mr. President, to honor these men: Comdr. John Whiddon, PO2c. Jeff Tunks, Lt. Greg Breithaupt, PO3c. Mark Milne, and PO1c. Carl Saylor. Without question they are, as their service's motto declares: Always ready, and it is a fitting tribute to our oldest branch of the service, and the one that seems to be always called upon to do more with less, the U.S. Coast Guard and their motto semper paratus.

ORDER OF PROCEDURE

Mr. MURKOWSKI. Mr. President, I ask the Chair whether we are in morning business and have any time limit on the speeches at this time?

The PRESIDING OFFICER (Mr. DASCHLE). There is a 5-minute time limit for morning business.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that I may have a few more moments to make a statement with regard to Soviet fishing in the Bering Sea.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. MURKOWSKI. I thank the Chair.

JAPAN'S ATTEMPT TO DERAIL UNITED STATES-SOVIET INITIATIVES ON BERING SEA FISHERIES

Mr. MURKOWSKI. Mr. President, we have seen efforts by the Soviets, in cooperation with our own Government, to attempt to resolve a very serious situation in the Bering Sea known as the doughnut hole where we have seen evidence of vessels operating in an area adjacent to the doughnut hole illegally. I would like to call this to the attention of my colleagues.

As a consequence of this concern and other concerns, specifically the item I want to bring to the attention of my fellow Members is, as a result of, apparently, Japan's attempt to attempt to derail some of the negotiations that are going on between our Government and the Soviet Government with regard to specific initiatives on Bering Sea fisheries.

Mr. President, during the recent Moscow summit, Secretary Shultz and Soviet Minister Shevardnadze signed a new comprehensive fisheries agreement between the United States and the Soviet Union.

Along with other issues, that document noted that both our countries are concerned about the potential effects of unregulated fisheries in the international area of the Bering Sea known as the doughnut hole.

As a result of that concern, the United States and the Soviet Governments scheduled an international scientific symposium of Bering Sea fisheries for July 19–21 in Sitka, AK. Scientists from all the concerned coastal and fishing nations were invited to attend.

The largest of the unregulated fishing fleets belongs to Japan, and harvests at least 700,000 metric tons annually from the international waters.

There also have been many allegations that vessels of the Japanese fleet commonly cross into the United States 200-mile zone to fish illegally in the richer grounds on the United States side. Indeed, just last week several Japanese companies agreed to pay rather large fines for doing exactly that: illegal fisheries.

At almost the same time, however, the Government of Japan announced that it too, is calling a multilateral meeting on the donut hole problem. This meeting, scheduled for Tokyo just days before the jointly sponsored symposium in Sitka, gives the clear appearance of a bold attempt to slow down the growing momentum toward a resolution of a problem referred to as the donut hole problem.

It is a slap, I think, in the face for those of us seeking a viable solution and can be regarded as an insensitivity, if you will, to the formal diplomatic protocol which is being followed.

It is my understanding the State Department has indicated that the United States does not plan to participate in the Tokyo meeting. That decision is the only appropriate one for the circumstances.

Mr. President, the Government of Japan may be completely sincere in its stated desire to discuss the donut hole problem, but if so, it should recognize the need to begin with science, not politics.

We must make our decisions based on sound scientific evidence and not emotion, and this is the purpose of our proposed meeting as opposed to the purpose of the Japanese meeting, which is simply to retain the opportunity to fish in that area. If Japan really wants to help solve the donut problem it will cancel its call for a Tokyo meeting, and send its scientists to Sitka so that we can address the facts behind the necessity of mutually managing this resource because we all know, Mr. President, that unless we work collectively in managing our fishery resources, why, indeed, someday somebody will catch the last fish.

I thank the Chair and I yield the floor.

Mr. FOWLER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

ADJOURNMENT UNTIL 10:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

CALL OF THE CALENDAR, MOTIONS OR RESOLUTIONS OVER UNDER THE RULE, MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow, the call of the calendar be waived; that no motions or resolutions over under the rule come over; that there be a period for morning business not to extend beyond 20 minutes and Senators may speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATUS OF S. 430 AND S. 1323

Mr. BYRD. Mr. President, I ask unanimous consent that S. 430, the bill to amend the Sherman Act regarding retail competition, and S. 1323, the corporate takeover measure, both be considered pending business, neither to be affected by an adjournment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. So S. 1323 will no longer be unfinished business nor will S. 430 be unfinished by virtue of an adjournment.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. BYRD. Mr. President, the distinguished Republican leader has indicated that he has no further statement, no further business to transact, and that there is no necessity for his being present when the Senate goes out. I therefore move that the Senate stand adjourned under the order until 10:30 a.m. tomorrow.

The motion was agreed to, and the Senate, at 6:11 p.m., adjourned until Wednesday, June 22, 1988, at 10:30 a.m.

HOUSE OF REPRESENTATIVES—*Tuesday, June 21, 1988*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious God, give to each person the awareness of seeing daily tasks as vocations of service to Your human family. We know that much of what we do may not seem important and there is frustration for every person. Yet, teach us to see how each deed that enables our common life to go forward, that enhances our relationships with respect, that fosters justice and mercy, is a deed that makes real Your calling to us that we should use the abilities You have given to contribute to our shared welfare. Bless us as we seek to serve You by serving others. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. OLIN. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. OLIN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will inform absent Members.

The vote was taken by electronic device, and there were—yeas 270, nays 121, not voting 40, as follows:

[Roll No. 191]

YEAS—270

Ackerman	Bevill	Cardin
Akaka	Bilbray	Carper
Alexander	Boggs	Carr
Anderson	Bonior	Chapman
Andrews	Bonker	Clarke
Annunzio	Borski	Clement
Anthony	Bosco	Coats
Applegate	Boucher	Coelho
Archer	Boxer	Coleman (TX)
Aspin	Brennan	Combest
Atkins	Brooks	Conte
AuCoin	Broomfield	Conyers
Barnard	Brown (CA)	Cooper
Bartlett	Bruce	Coyne
Bateman	Bryant	Crockett
Bates	Bustamante	Darden
Beilenson	Byron	Davis (MI)
Bennett	Callahan	de la Garza
Berman	Campbell	DeFazio
Dellums	Kennelly	Rangel
Derrick	Kildee	Ravenel
Dicks	Kleczka	Regula
Dingell	Kolter	Richardson
Donnelly	Kostmayer	Rinaldo
Dorgan (ND)	LaFalce	Ritter
Downey	Lancaster	Robinson
Durbin	Lantos	Rose
Dwyer	Leath (TX)	Rostenkowski
Dymally	Lehman (CA)	Rowland (GA)
Dyson	Lehman (FL)	Roybal
Early	Leland	Russo
Eckart	Lent	Sabo
Edwards (CA)	Levin (MI)	Saiki
English	Levine (CA)	Sawyer
Erdreich	Lewis (GA)	Scheuer
Espy	Lipinski	Schneider
Evans	Lloyd	Schulze
Fascell	Lott	Sharp
Fawell	Lowry (WA)	Shaw
Feighan	Lujan	Shumway
Fish	Luken, Thomas	Shuster
Flake	Manton	Sisisky
Flippo	Markey	Skaggs
Foglietta	Martin (NY)	Skelton
Foley	Martinez	Slattery
Ford (TN)	Matsui	Slaughter (NY)
Frank	Mazzoli	Smith (FL)
Frost	McCloskey	Smith (IA)
Gaydos	McCurdy	Smith (NE)
Gejdenson	McEwen	Smith (NJ)
Gephardt	McHugh	Solarz
Gibbons	McMillan (NC)	Spratt
Gilman	McMillen (MD)	St Germain
Glickman	Mfume	Staggers
Gonzalez	Michel	Stallings
Gordon	Miller (CA)	Stark
Gradison	Mineta	Stenholm
Grant	Moakley	Stokes
Gray (IL)	Mollohan	Stratton
Gray (PA)	Montgomery	Studds
Green	Morella	Sweeney
Guarini	Mrazek	Swift
Gunderson	Murtha	Synar
Hall (OH)	Myers	Tallon
Hall (TX)	Nagle	Tauzin
Hamilton	Natcher	Taylor
Hammerschmidt	Neal	Thomas (GA)
Harris	Nelson	Torres
Hayes (IL)	Nielson	Torricelli
Hayes (LA)	Nowak	Traficant
Hefner	Oakar	Traxler
Hertel	Oberstar	Udall
Hochbrueckner	Obey	Valentine
Holloway	Olin	Vander Jagt
Horton	Ortiz	Vento
Houghton	Owens (NY)	Visclosky
Hoyer	Owens (UT)	Volkmer
Hubbard	Oxley	Walgren
Hughes	Packard	Watkins
Hutto	Panetta	Waxman
Jeffords	Patterson	Weiss
Jenkins	Pease	Whitten
Johnson (CT)	Pelosi	Wilson
Johnson (SD)	Pepper	Wise
Jones (NC)	Perkins	Wolpe
Jontz	Petri	Wortley
Kanjorski	Pickett	Wyden
Kaptur	Pickle	Wylie
Kastenmeier	Price	Yates
Kennedy	Rahall	Yatron

NAYS—121

Armey	Bunning	Dannemeyer
Badham	Burton	Daub
Baker	Chandler	Davis (IL)
Ballenger	Cheney	DeLay
Barton	Clay	DeWine
Bentley	Clinger	Dickinson
Bereuter	Coble	DioGuardi
Bilirakis	Coleman (MO)	Dornan (CA)
Bliley	Coughlin	Dreier
Boehlert	Courter	Emerson
Brown (CO)	Craig	Fields
Buechner	Crane	Frenzel
Gallegly	Marlenee	Sikorski
Gallo	Martin (IL)	Skeen
Gekas	McCandless	Slaughter (VA)
Gingrich	McCollum	Smith (TX)
Goodling	McCrery	Smith, Denny (OR)
Grandy	McDade	Smith, Robert (NH)
Gregg	Meyers	Smith, Robert (OR)
Hansen	Miller (OH)	Snowe
Hastert	Molinari	Solomon
Hefley	Moorhead	Stangeland
Henry	Morrison (WA)	Stump
Herger	Murphy	Sundquist
Hiler	Parris	Swindall
Hopkins	Pashayan	Tauke
Hunter	Penny	Thomas (CA)
Hyde	Porter	Upton
Ireland	Quillen	Vucanovich
Jacobs	Rhodes	Walker
Kolbe	Ridge	Weber
Lagomarsino	Roberts	Weldon
Latta	Rogers	Wheat
Leach (IA)	Roth	Whittaker
Lewis (CA)	Roukema	Wolf
Lewis (FL)	Rowland (CT)	Young (AK)
Lightfoot	Saxton	Young (FL)
Livingston	Schaefer	
Lowery (CA)	Schroeder	
Lungren	Schuette	
Mack	Sensenbrenner	
Madigan	Shays	

NOT VOTING—40

Biaggi	Hawkins	Moody
Boland	Huckaby	Morrison (CT)
Boulter	Inhofe	Nichols
Chappell	Jones (TN)	Pursell
Collins	Kasich	Ray
Dixon	Kemp	Rodino
Dowdy	Konnyu	Roe
Duncan	Kyl	Savage
Edwards (OK)	Lukens, Donald	Schumer
Fazio	MacKay	Spence
Florio	Mavroules	Towns
Ford (MI)	McGrath	Williams
Garcia	Mica	
Hatcher	Miller (WA)	

□ 1224

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1720. An act to replace the existing AFDC program with a new Family Support Program which emphasizes work, child support, and need-based family support supplements, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives;

H.R. 3097. An act to amend the Public Health Service Act to revise and extend the program of assistance to organ procurement organizations, and for other purposes;

H.R. 4418. An act to authorize appropriations for the National Science Foundation for fiscal years 1989 and 1990, and for other purposes; and

H.R. 4639. An act to amend the Higher Education Act of 1965 to prevent abuses in the Supplemental Loans for Students program under part B of title IV of the Higher Education Act of 1965, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 1720) "An act to replace the existing AFDC Program with a new Family Support Program which emphasizes work, child support, and need-based family support supplements, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives," and requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BENTSEN, Mr. MOYNIHAN, Mr. PRYOR, Mr. ROCKEFELLER, Mr. DASCHLE, Mr. PACKWOOD, Mr. DOLE, Mr. WALLOP, and Mr. ARMSTRONG to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 2485. An act to make minor substantive and technical amendments to title 18, United States Code, and for other purposes; and

S. Con. Res. 121. Concurrent resolution to commemorate the 50th anniversary of the Javits-Wagner-O'Day Act.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC,
June 21, 1988.

Hon. JIM WRIGHT,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I have the honor to transmit herewith a copy of the certificate of election received from Earl W. Davis, Chairman of the State Board of Elections of the Commonwealth of Virginia, certifying that, according to the official returns of the Special Election held on June 14, 1988, the Honorable Lewis F. Payne, Jr. was elected to the office of United States Representative in Congress from the Fifth District of Virginia.

With great respect, I am,
Sincerely yours,
DONNALD K. ANDERSON,
Clerk, House of Representatives.

COMMONWEALTH OF VIRGINIA

To all to whom these presents shall come—greeting:

This is to Certify, that at a meeting of the State Board of Elections, held in its office on June 21, 1988, on an examination of the Official Abstracts of Votes on file in that office it was ascertained and determined that at the special election held on June 14, 1988 to fill a vacancy in the office of Member of the House of Representatives of the United States from the Fifth Congressional District, L.P. Payne, Jr., was duly elected a Member of the House of Representatives of the United States for the unexpired term to end on the third day of January, 1989.

SWEARING IN OF THE HONORABLE LEWIS F. PAYNE, JR., OF VIRGINIA AS A MEMBER OF THE HOUSE

The SPEAKER. Will the gentleman from Virginia, Mr. LEWIS F. PAYNE, JR., please step forward.

Mr. PAYNE appeared at the bar of the House and took the oath of office.

The SPEAKER. The gentleman from Virginia is a Member of the U.S. House of Representatives.

WELCOME, MR. LEWIS F. PAYNE, JR.

(Mr. OLIN asked and was given permission to address the House for 1 minute.)

Mr. OLIN. Mr. Speaker, it is an unusual privilege and a pleasure to welcome Mr. L.F. PAYNE as a Member of this House, and I speak in behalf of the Virginia delegation.

I would like to take note that our two Senators, Senator TRIBLE and Senator WARNER, were here for the swearing in. We appreciate that.

Mr. L.F. PAYNE was born in my district in Amherst County and his parents still live there.

He comes from a good, hearty stock. His father was a trooper, a State trooper; his mother a teacher. He is a businessman. He is the owner and developer of the Wintergreen Mountain Estates and various recreational activities at which he was a considerable success.

He got his education in Amherst County, went on to the Virginia Military Institute and finished up with an MBA at the Darden School for Business Administration at UVA.

He is a conservative in the finest tradition of the Commonwealth of Virginia and we are mighty proud to have him here as part of this delegation. I think he is going to have a long and healthy career in this House and a distinguished one like his predecessor.

□ 1230

THE BEGINNING OF A NEW SERVICE

(Mr. PAYNE asked and was given permission to address the House for 1 minute.)

Mr. PAYNE. Mr. Speaker, today is an exhilarating day for me.

I cannot tell you that it has been my lifelong ambition to serve in this body, but, rather, this desire has been building in me over the years and today is the culmination of a lot of circumstances more than a realization of long-term goals.

I especially wish to thank and recognize my family and the many supporters of the Fifth District who are here in Washington for this occasion.

Certainly I wish the circumstances of my election were different. Following the path already charted by my predecessor, the late Honorable Dan Daniel, will not be easy for me. He set a standard in representing the people of the Fifth District which will be difficult to match and impossible to exceed. Nevertheless, I look forward to working with my new colleagues in an entirely new field of endeavor, and I pledge my best efforts to the interests of the Nation and of the people whom I have been chosen to represent.

Mr. Speaker, I look forward to working with all of my colleagues.

DISPENSING WITH CALL OF THE PRIVATE CALENDAR

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that the call of the Private Calendar be dispensed with today.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PERMISSION TO HAVE UNTIL MIDNIGHT TOMORROW TO FILE CONFERENCE REPORT ON H.R. 4567, ENERGY AND WATER DEVELOPMENT APPROPRIATION, 1989

Mr. BEVILL. Mr. Speaker, I ask unanimous consent that the managers may have until midnight Wednesday, June 22, 1988, to file a conference report on the bill (H.R. 4567) making appropriations for energy and water development for the fiscal year ending September 30, 1989, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. WALKER. Mr. Speaker, reserving the right to object, I do not intend to object, but I will take this time in order to ask the gentleman from Alabama a question, if I may.

There has been some indication that the conferees would attempt to drop the drug-free workplace language once they get to conference. May I inquire of the gentleman what the status of that language is in his bill and what the intent of the House conferees is insofar as that subject is concerned?

Mr. BEVILL. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Alabama.

Mr. BEVILL. Mr. Speaker, we, of course, will be discussing that matter. The Senate did leave it out, and there are many who feel like the gentleman from Pennsylvania does, since it is my understanding the gentleman has made a statement that the language that is in the bill should be reworded. Certainly no one is objecting to the gentleman's intention, but there is some question about the wordage of it. I am sure this is something that the gentleman will get worked out on these appropriation bills if he wants to get it worked out, but we have not made that decision as yet. However, we will be discussing that in the conference.

Mr. WALKER. Mr. Speaker, further reserving the right to object, the gentleman is absolutely correct, the language that is in his bill is language that has even been modified here on the House floor, and the language I will be offering today, for instance, in the DOD bill includes language that was orginally drafted by the gentleman from Michigan [Mr. KILDEE], which I think improves the amendment.

This gentleman would have no problem with the language which in fact reflects what the House has done most recently. I would have some problem, though, if we would bring the bill back and there is no language at all in it. I think that would go against what the House did by rather overwhelming votes.

Mr. BEVILL. Mr. Speaker, we think the effort the gentleman is making is commendable, but it is a question of getting suitable language to reflect what the gentleman is recommending.

Mr. WALKER. But the gentleman's intention is to bring back some language?

Mr. BEVILL. Well, I am going to discuss it with them. I do not know. We will just have to wait and see.

Mr. WALKER. Mr. Speaker, I thank the gentleman from Alabama, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON CRIME OF COMMITTEE ON THE JUDICIARY TO SIT TODAY DURING THE 5-MINUTE RULE

Mr. SMITH of Florida. Mr. Speaker, I ask unanimous consent that the Subcommittee on Crime of the Committee on the Judiciary be permitted to sit this afternoon while the House is reading for amendments under the 5-minute rule.

The purpose of the meeting is to mark up antidrug abuse legislation. The minority has been consulted and has no objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

THE LATE HONORABLE GLADYS NOON SPELLMAN

(Mr. HOYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOYER. Mr. Speaker, Gladys Spellman, friend and former colleague to many of us in this House, is finally at peace. She passed away in the early morning hours of June 19, 1988.

Gladys was elected to this House, to represent the Fifth Congressional District of Maryland, in 1974. She was reelected three more times, by growing margins. In 1980, her last reelection came 4 days after she had suffered a cardiac arrest and lapsed into a coma from which she never awoke. Nonetheless, she was reelected with 82 percent of the vote. The House waited hopefully for her recovery, but with great regret declared her seat vacant in February 1981.

We should not dwell on the tragic circumstances of Gladys' death, for she was a unique, accomplished, wonderful human being. Gladys' life and career are what we should recall. For 12 years she served as a member of the Prince Georges County Board of Commissioners and County Council.

When she left that post, the government of our county had been brought into the modern age, thanks in no small part to her skill, intelligence, and vision. In this House, she was a member of the leadership and was known as a champion of Federal employees and a tireless advocate for her constituents.

And I say with no small bit of admiration that Gladys was truly one of the most skilled politicians I have ever met. Most of the time, however, you forgot that Gladys was a politican, in her presence you were overcome by her charm. She was one of the most vivacious and warmest of people.

For the past 8 years, we have missed Gladys in community and public life. Her family has missed her most of all, for she was a loving wife and mother. Those of us who knew Gladys thank God that she is now at peace and that the long ordeal of her family has now ended.

EXPRESSION OF SYMPATHY FOR THE SPELLMAN FAMILY—IN SUPPORT OF H.R. 4150, POSTAL SERVICE REORGANIZATION ACT AMENDMENTS

(Mrs. SMITH of Nebraska asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SMITH of Nebraska. Mr. Speaker, I want to join in expressing sympathy for the family of Gladys Noon Spellman. I knew her also as a very effective Member of the Congress and a fine, gracious woman. We are sorry that she had so many difficult years.

Mr. Speaker, today we will vote on H.R. 4150, to remove the Postal Service from the unified Federal budget. I encourage my colleagues to express their support for the USPS by voting "yes."

H.R. 4150 would return the Postal Service to the off-budget status it enjoyed prior to fiscal 1986 and restore the independence Congress intended for the agency.

While it has been on budget, the USPS has been vulnerable to political maneuvering and deficit pressures.

We know the results of this tinkering—postal construction projects and processing equipment have been canceled and window hours and other services cut.

Passage of H.R. 4150 should be seen as a vote of support for the Postal Service. And I hope it will put an end to this talk of repealing the private express statutes and privatizing postal services.

These statutes guarantee universal postal service. And that means postal service to all U.S. citizens, in all communities of the country, whether rural or urban, rich or poor.

Repeal of the statutes and privatization would turn over our universal system to profit-motivated operations. They in turn would sacrifice universal service for the guaranteed profits of city deliveries.

I say no. I cannot support a change that would threaten the unity of the Nation and in effect relegate rural residents to second-class citizenry.

No other postal system in the world can match the U.S. Postal Service. It beats them all in cost and efficiency.

Yes, it makes mistakes now and then, but in the overall scheme of things—which includes delivering more than 150 billion pieces of mail annually without receiving any tax dollars to do so—the U.S. Postal Service is a bargain, and it does a remarkably good job.

The U.S. Postal Service has my support. And I urge my colleagues to voice the same sentiment with a "yes" vote on H.R. 4150.

COMMEMORATION OF THE 50TH ANNIVERSAY OF THE MOUNT RUSHMORE NATIONAL MEMORIAL

(Mr. JOHNSON of South Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of South Dakota. Mr. Speaker, in just a few years we will be celebrating the 50th anniversary of the Mount Rushmore Memorial. Today I am introducing legislation which will in many ways help to us adequately celebrate this momentous occasion—an occasion which deserves our recognition, our respect, and our reverent reflection.

The facilities at Mount Rushmore are in desperate need of physical improvements and expansion to accommodate the vast number of tourists that visit the memorial every year. There have been no substantial improvements to the facilities in almost 25 years, and the annual visitation level has nearly doubled since that time. In 1991, we can anticipate an even stronger onrush of visitors who will wish to be a part of the golden anniversary celebrations. To help pay for badly needed renovation to accommodate these tourists, my legislation will call for commemorative coins to be issued which will recognize the golden anniversary of the memorial. Half of the surcharges from the sale of these coins will go toward improving the facilities at Mount Rushmore, and the other half will go toward reducing the national debt.

I would urge my colleagues to join me in supporting this extremely important legislation on behalf of one of America's greatest national shrines—the Mount Rushmore National Memorial.

CELEBRATION OF THE 200TH ANNIVERSARY OF NEW HAMPSHIRE'S RATIFICATION OF THE CONSTITUTION

(Mr. GREGG asked and was given permission to address the House for 1 minute.)

Mr. GREGG. Mr. Speaker, today New Hampshire celebrates and America also celebrates this day, the 200th anniversary of New Hampshire's ratification of the Constitution of the United States, New Hampshire being the ninth State to ratify the Constitution, making that Constitution an effective document under which our country is directed. The wisdom of our forefathers is obviously seen in the fact that for 200 years we have had prosperity and we have had freedom.

Today we rededicate ourselves to that wisdom and hope that we will continue for another 200 years on this course. It is clearly our purpose today to say to our forefathers: "Thank you for giving us such a great document," and it is also our purpose to celebrate that document's existence.

□ 1240

MILITARY FRAUD IS NOTHING NEW

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, military fraud is really nothing new. Most Americans recognized that something was wrong when they read about the $5,000 coffeepots and $2,000 toilet seats. It was sort of like a dead giveaway.

The problem is the Justice Department was either out to lunch or simply tuned out. I believe that they turned their backs the last 7 years.

In 1987 I wrote and asked the Attorney General for an investigation of the Navy relative to a contract with McDonald Welding in my district. They did not even give the courtesy of a call back. All that happened was the contract was literally taken away from McDonald Welding and given to their fat cat friends who have a pipeline to the Pentagon.

The problem is that all of this military fraud really has produced two losers: The American taxpayer and the small companies of America like McDonald Welding, and I am still waiting for a response.

INSENSITIVITY OF JOE SINSHEIMER

(Mr. RAVENEL asked and was given permission to address the House for 1 minute.)

Mr. RAVENEL. Mr. Speaker, two of our most respected and admired colleagues, Congressmen Melvin Price, recently deceased, and FLOYD SPENCE, were demeaned last week by a man named Joe Sinsheimer. I rise to take umbrage at his coarse and insensitive remarks. FLOYD, to our applause, is gallantly returning to health as the result of a hazardous double lung transplant operation. In comments published in a statewide South Carolina newspaper, Sinsheimer, southeastern campaign director for one of our political parties, is quoted as saying, "it's not easy running against a dying man. The Spence problem," he went on, "is like the Mel Price syndrome. If SPENCE is out there campaigning in a wheelchair, maybe the voters will decide to do something else." Enough said, Mr. Speaker. Sinsheimer's words speak the mark of the man. For the good of our elective process, my hope is that those responsible for him will take some appropriate action.

UNSER RESOLUTION

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute.)

Mr. RICHARDSON. Mr. Speaker, today I am introducing a resolution to honor one of the most prominent and respected families in the State of New Mexico—the Unser family of auto racing fame. The Unser family once again played a prominent role in the most recent Memorial Day classic—the Indianapolis 500. The Unser family, or Clan Unser as they are frequently called, has set a standard in the sport of race car driving that would be hard to match.

Bobby and Al Unser have seven Indy 500 victories between them. Their brother Jerry Unser was off to a bright career in racing—he was the national stock car champion in 1957—before his life was tragically ended at the Indy time trials. Their sons Al Unser, Jr., Bobby Unser, Jr., and Robby Unser have been making great strides in the sport of race car driving. Al Jr. almost won the Indy car crown in 1985 but was beaten by one point by his father Al Sr.

Mr. Speaker, this family has greatly enhanced the sport of race car driving. The Unsers have set an example of excellence for young and old throughout the State of New Mexico and the entire Nation. I urge my colleagues to support this concurrent resolution which honors the Unser family and expresses the admiration of Congress for their efforts. I further urge that this resolution be given speedy consideration by the appropriate House committee and passed by the full House.

NEW BEEF AND CITRUS AGREEMENT REACHED WITH JAPAN

(Mr. BEREUTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, yesterday Ambassador Clayton Yeutter, the United States Trade Representative announced that the United States has reached a new agreement with Japan over the import of United States beef and citrus products.

This comes as very good news to the beef producers of the United States. By 1991, when Japan's markets are to be completely liberalized, United States trade officials expect that the value of United States beef exports will double to at least $1 billion per year.

Most importantly, the agreement calls for a year-by-year phase out of import quotas on beef products and fresh oranges over a 3-year period, and quotas on orange juice over 4 years. Less than the best news, but part of the hard-fought negotiations is the acceptance of the arrangement that

Japan will be permitted to temporarily and substantially raise duties of beef products to certain specified levels during a second 3-year adjustment period, at the end of which the Japanese beef market will be fully liberalized.

The agreement also calls for a 3-year phase out of the import management operations of Japan's Livestock Industry Promotion Corp. which has monopolized the marketing of United States beef products in Japan.

The Government of Japan has also agreed to tariff reductions on a number of other food products—including grapefruit, lemons, peaches, pears, nuts, sausage, pork and beans, and beef jerky.

This agreement comes despite the fact that certain minor, dissident United States farm groups took the side of Japanese producers against American ranchers and farmers, and undercut the negotiating efforts of the United States Trade Representative.

Again, congratulations are in order for Ambassador Yeutter, the USTR negotiating team, the livestock and meat industry, and to Members of Congress who have been active in seeking the end to the inequitable Japanese quotas on beef and citrus.

HOUSE DROUGHT TASK FORCE SHOULD ASSIST WISCONSIN DAIRY FARMERS

(Mr. OBEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OBEY. Mr. Speaker, as everybody should know, the Midwest is suffering from the worst drought in almost 50 years. A number of steps have been taken to help affected farmers, but it still means tough times once again for many family farmers.

It also means tough times for consumers and recipients of Federal nutrition programs because, as production falls, prices will rise, and surplus commodities will become scarce.

In the dairy industry, farmers have already begun sending their cows to slaughter early because they simply cannot afford the high cost of feed. That will mean lost production, higher prices and nutrition programs, such as TEFAP, which have already been cut back, will be squeezed further.

The Secretary of Agriculture can do something about that. Dairy farmers in Wisconsin are receiving the lowest support prices in 10 years compounding the problems they face with the drought. Raising the dairy support price will allow many marginal farm families to keep their cows and maintain needed milk production.

Mr. Speaker, I have asked Agriculture Secretary Lyng to consider using his authority to increase the Federal support for the price for milk, and I ask the Members to join me in urging the Secretary and the House Drought Task Force to seriously consider a milk support price increase as part of any drought assistance package for farmers.

HOW TO SAVE $2 BILLION A YEAR

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, last April, Mr. ASPIN, on behalf of Mr. DICKINSON, myself, and other Members, was prepared to offer an amendment to the Defense authorization bill which would save $2 billion a year by closing or realigning obsolete military bases.

That amendment was withdrawn after an agreement was reached with the leadership under which the base closing legislation would be considered by the House as a free-standing bill. The agreement specified that it would be brought to the floor before the completion of the conference on the Defense bill. This timing would allow the House conferees to consider base closing as part of that conference.

We are now told that this complement may not be met. The conference is scheduled to be completed this week, but no floor action has been scheduled on the base closing bill.

Members of the House have a right to expect that commitments made by the leadership will be met. I strongly urge that this bill be brought to the floor before the conference is completed, and that base closure language be included in the final conference report.

PENTAGON SCANDAL

(Mrs. BOXER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOXER. Mr. Speaker, "Ill Wind" is the code name for the massive probe of corruption in the Pentagon that is shaking us all.

Let us turn this ill wind into winds of change that many of us have been calling for.

First of all, let us change the cozy relationship that exists between defense contractors and defense procurement officials by passing tougher revolving door legislation to require a substantial cooling off period before Pentagon procurement officials change hats and, with inside information galore, go off to a lucrative consulting job with the same defense contractor they oversaw.

Second, let us ensure that whistleblowers are protected. Without a whistleblower there would have been no "ill wind" investigation.

Then let us develop a truly independent procurement corps headed by an independent procurement director appointed by the President.

And, finally, let the winds of change bring us new leadership in the Presidential election. This Reagan-Bush administration has thrown too many billions of dollars at the military without adequate oversight. Somehow the deficits of deficits never included Pentagon deficits.

It is time to turn ill winds into winds of change.

NEW HAMPSHIRE ANNIVERSARY OF RATIFICATION OF THE CONSTITUTION

(Mr. SMITH of New Hampshire asked and was given permission to address the House for 1 minute.)

Mr. SMITH of New Hampshire. Mr. Speaker, today marks the 200th anniversary of New Hampshire's critical ratification of the U.S. Constitution.

When New Hampshire's Winter Constitutional Convention started in Exeter in February 1788, there was bitter debate between Federalists—who argued that a strong government was needed to provide stability and pull the country out of a recession, and anti-Federalists—who believed the Constitution laid the groundwork for a tyrannical government.

John Langdon, New Hampshire's Federalist Governor and one of the signers of the Constitution—whose name appeared right below George Washington's—succeeded in getting the convention adjourned for several weeks to lobby opponents to support the Constitution.

When the convention reassembled on June 19, 1788, in the now capital city of Concord, the Federalists won. On Saturday, June 21, motions for ratification by New Hampshire Chief Justice Samuel Livermore and Governor Langdon passed by a vote of 57 to 47. New Hampshire then became the ninth and last-needed State to ratify the document—making it the law of the land.

Joshua Atherton of Exeter, key spokesman for the anti-Federalist who once commanded a majority, said, "it is adopted * * * let us try it."

The granite State is standing proud today for our role in ensuring a system of government that promoted freedom and democracy. As Langdon said, "we placed the keystone in the great arch."

Our Constitution was not easily achieved. It is our moral obligation to see that it is preserved.

□ 1250

DROUGHT RELIEF FOR KANSAS FARMERS

(Mr. SLATTERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SLATTERY. Mr. Speaker, yesterday 21 Kansas counties, applied for emergency drought relief with the proper Washington agencies. I am pleased that the request for emergency drought relief by six counties in northeast Kansas was approved today by the Secretary of Agriculture. These counties include Atchison, Doniphan, Brown, Clay, Jefferson, and Leavenworth Counties.

Because of the drought conditions, hay and pasture on set-aside and conservation reserve program acres are rapidly losing nutritional value and must be harvested immediately.

According to Kansas agricultural statistics, northeast Kansas has only received 65 percent of normal rainfall for the first 5 months of the year. The Midwest is clearly experiencing one of the worst droughts in 50 years.

The quicker the Department of Agriculture can approve these emergency requests, the faster Kansas farmers can begin emergency operations to minimize drought loses.

LEADERSHIP SHOULD HONOR AGREEMENT TO SCHEDULE BASE CLOSING PROPOSAL

(Mrs. ROUKEMA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Speaker, with anxiety growing over waste and abuse in defense spending, how can we be foolish to let an opportunity to save billions of dollars slip away from us? That is what might happen if the leadership does not honor its agreement to schedule Mr. ARMEY's base closing proposal for a vote before the defense conference finishes its business in a few days.

I have followed the base closing issue closely and I am convinced that the House stands ready to pass this proposal, just as the other body has already done. But if we do not act in the next few days we will lose a unique opportunity.

Certainly, base closing is a sticky political issue. Nobody wants to see bases closed, but the Defense Savings Act addresses these concerns. It has 135 bipartisan cosponsors, and it has the enthusiastic support of the Secretary of Defense. It deserves to be brought before the House for a vote.

Mr. Speaker, the American people are sick and tired of hearing about abuses in defense spending. It would be a travesty to lose an opportunity to save these billions of dollars. I urge you to schedule this vote so that it can be considered in the ongoing defense conference.

THE COUP IN HAITI

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Speaker, an army coup has removed Leslie Manigat, the civilian President of Haiti. He had been installed by the army in a rigged election just 4 months ago.

Our State Department appropriately condemned this serious blow to hopes for democracy.

The ones most responsible for this latest blow to Haitian democracy are Haitian officials themselves. On October 29, they allowed the slaughter of innocent people as thousands stood in line to vote.

Our administration must go beyond its appropriate condemnation of the latest coup in Haiti. It must look at its own policy. It placed its hopes on Manigat, that one who came to power in collusion with evil forces would be a factor for good, that a policy of going along instead of standing up might work. It did not.

The State Department has said it will consult Congress and other countries in the Caribbean about what to do next.

Some of us in Congress have proposed trade sanctions. The situation in Haiti is dire. A pressure that is strong enough, focused enough and internationally supportive might help change the situation.

We owe it to the people of Haiti, those who risked their lives to go to the polls last November, at least to try.

BASE CLOSING BILL COMMITMENT SHOULD BE HONORED

(Mr. BUECHNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BUECHNER. Mr. Speaker, the House and our Nation have a right to expect that legislative commitments are met, especially, Mr. Speaker, those made by the leadership last April, that leadership, the majority party's leadership, promised the House that even though they would not allow legislation to close obsolete military bases to be offered to the Defense bill, the leadership would bring such legislation to the House floor before the Defense authorization conference was completed.

That conference is scheduled to be finished this week, but the base closing bill has not been brought up for consideration.

It is bad enough that a commitment may be broken. But even worse, by delaying action on this bill, the House is missing an opportunity to eliminate literally billions of dollars of waste from the Defense Department. As a member of the Budget Committee I take special exception to this breach of faith and budgetary sanity.

Mr. Speaker, how can we be serious about reducing the deficit if we do not pass this straightforward measure to cut excess Government spending?

LOUISE MANDRELL'S EIGHTH ANNUAL BENEFIT FOR THE HANDICAPPED

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUBBARD. Mr. Speaker, Louise Mandrell, the talented musician from Nashville whose recordings and television shows are familiar to millions of Americans, has hosted her own annual celebrity golf benefit in Paducah, KY, for the past 7 years.

This next weekend will be Louise Mandrell's eighth annual benefit for handicapped children and adults in western Kentucky.

Primary benefactors from the efforts of Louise Mandrell include the West Kentucky Easter Seal Center in Paducah, the Marshall County School for Exceptional Children at Benton, KY, and the J.U. Kevil Center in Mayfield, KY.

The 1988 chairman of the Louise Mandrell Benefit, Paducah attorney E. Frederick Straub, Jr., is among those expressing appreciation for Louise Mandrell's continuing interest in and willingness to help handicapped children and adults.

Beautiful Louise Mandrell leaped into the national spotlight in 1980 as one of the talented siblings on the NBC television show, "Barbara Mandrell and the Mandrell Sisters."

Special thanks to Louise Mandrell for again coming to Paducah, KY, this next weekend for her eighth annual benefit effort for needy western Kentuckians.

BASE CLOSING: THE HOUSE DESERVES A VOTE

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, in April, as the House prepared to consider this year's DOD authorization, the Rules Committee blocked DICK ARMEY from offering his base closing amendment. It was agreed that three House committees would get a chance to mark up their own versions of the bill. At the same time, a free standing vote on the

bill close to June 1 was promised in order for the House to weigh in before the DOD conference was completed.

Well, Mr. Speaker, it is now June 21, and the bill is nowhere to be found on the schedule. Our DOD conferees, armed only with a motion to instruct, negotiate with Senate counterparts who had almost 2 full days of debate on this subject in the Senate. The completion of the DOD conference threatens to make any future House vote moot.

The Senate's base closing provision contains some important improvements on both the original bill and the version marked up by the Armed Services Committee, including staff requirements, composition of commission members and consideration of overseas bases.

This issue is too important for the Members of the House to be denied a free standing vote. The leadership must live up to its promise and put the Armey base closing bill on the floor soon.

HAITIAN COUP SHOWS FAILURE OF UNITED STATES FOREIGN POLICY

(Mr. DE LUGO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DE LUGO Mr. Speaker, once again, the people of Haiti are suffering through political upheaval—a military coup, while the United States sits by without any coherent foreign policy toward this island nation.

United States policy toward Haiti since the departure of "Baby Doc" Duvalier has been a continuing series of disasters.

We promoted democratic reforms and, at our urging, the people of Haiti turened out in large numbers to vote. Then we stood by helplessly as thugs slaughtered them at the polls while the Haitian Army just watched.

We stood on the sidelines for a second election, which was rigged, and only created a sham of a civilian government. When that government recently moved to exert some control over the Army, we were unprepared and unable to help as the Army callously seized power and announced it would rule by decree.

The democratic-minded people of Haiti must be wondering if they can afford to rely on the United States for support.

I want to express the deep concern that the people of my home islands feel for our neighbors in Haiti, who are struggling to establish democracy, as so many of their West Indian neighbors have been able to do. I also want to express our disappointment that the United States has just stood by as the hopes for the creation of a democratic government in Haiti have been cynically crushed.

DEFENSE SAVINGS ACT WOULD ADDRESS BASE CLOSING ISSUE

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, the newspapers are filled with stories of the unfolding scandal at the Defense Department—a sordid tale of public officials, private consultants, and large Defense contractors working together to distort crucial Defense decisions.

What we must remember, though, is that the legal, political use of our defense dollars can often distort Defense decisions as much as outright illegal bribery.

In no area is this more evident than in military basing decisions. We all know that military bases are often closed or kept open for political reasons that have little to do with our objective defense needs.

The House, however, has a chance to eliminate politically motivated Defense spending by passing the Defense Savings Act—a bill to take the politics out of military base closing decisions and save over $2 billion a year.

A vote on this bill is long overdue. I urge the leadership to meet its commitment and bring this issue to the House floor before the conference on the Defense authorization is completed.

STOP PLAYING POLITICS WITH THE MILITARY BASE CLOSING ISSUE

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER of California. Mr. Speaker, the House has not considered the military base closing issue yet because the Democrat leadership refuses to schedule it for a floor vote.

Earlier this year, the Democrats kept the base closing amendment off the DOD bill by promising to consider it as a separate bill but there was an understanding that it would still be considered in the DOD conference. The separate bill and floor vote was simply to be an expression of the House's will to guide the conferees.

Now the Democrat leadership is singing a different tune. Their reasoning goes like this: They do not want to handle this issue in conference until the House has a chance to vote on it. But the House will not get a chance to vote on it until after the DOD conference ends.

Mr. Speaker, this looks more and more like a shell game to keep this important issue from being acted on. I call on the Democrat leadership to work quickly to get this measure up for a vote before the conference ends so that we can get on with saving the taxpayers between $2 and $5 billion each year.

Let me add parenthetically, Mr. Speaker, many people said it would be the Lakers in seven and it looks now as if that will be the case tonight.

THE THRIFT INDUSTRY CRISIS

(Mr. LEACH of Iowa asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEACH of Iowa. Mr. Speaker, the Federal Home Loan Bank Board announced today that the American thrift industry has lost $3.8 billion in the first quarter of this year. This quarterly deficit means that the industry is losing money at a $15 billion annual clip.

As we all know, the economy appears on the surface to be humming along, but below the thin crust of prosperity there is a pernicious disease eating at our economic security, symbolized by the thrift crisis, the overleveraging of capital, is the single greatest threat to our economy. It is also the single greatest financial scandal in which this body is complicitous.

Too loose laws have led to too loose regulations, which have led to too loose banking practices.

It is time for Congress to examine the pressure group syndrome that has put this Congress on the line, and that means the American people, for approximately $50 billion today and potentially $100 billion tomorrow.

Last week I introduced legislation to try to bring this restraint into play. I urge the committee of jurisdiction to look at it very seriously.

□ 1305

LOUIS J. HOLLIS, CAPITOL HILL PHOTOGRAPHER

(Mr. MCEWEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. MCEWEN. Mr. Speaker, this morning as I opened the newspaper I was shocked and saddened to learn of the passing of Louis Hollis, a long-time friend of the Congress and faithful photographer on the House staff.

Mr. Hollis, his cheerfulness and faithfulness made service here even more special. Mr. Speaker, thousands of memories are preserved on mantels and shelves across America, memories of Americans who have visited their Capitol which were preserved by photographs taken by Louis Hollis.

Mr. Speaker, on at least two occasions last week I suggested to Lou that he take it easy in the 90-degree heat

with his red face and beaded brow as he would faithly go from job to job, from building to building, and from Congressman to Congressman recording the visits of faithful taxpayers as they came to be here. I for one, am sure I speak for many Members of Congress, feel a deep sense of sadness at Lou's passing. he will be sorely missed. To his wife, his son, his daughter, and to the whole family I wish them God speed at this very special time, for a very tremendous hole has been left in the heart of us all by his passing.

LOUIS J. HOLLIS, CAPITOL HILL PHOTOGRAPHER

Louis J. Hollis, 59, a photographer with the U.S. House of Representatives, died June 18 at Fairfax Hospital after a heart attack.

Mr. Hollis, who lived in Falls Church, was born in Washington and graduated from the old Central High School. He served in the Navy from 1950 to 1952.

After serving in the Navy, he worked in the photography laboratory of the Department of Agriculture, then became a photographer with the old Washington Times-Herald in 1954, Mr. Hollis joined the photography staff of the Washington Daily News.

When that newspaper closed in the early 1970s, he became a freelance photographer and then went to work as a photographer for the House of Representatives. There his duties included taking pictures of members with their constituents, committee hearings and the like.

Survivors include his wife, Judy Hollis, one son, L. John Hollis, and one daughter, Patricia Ann Hollis, all of Falls Church; his sister, Peggy Sondheimer of Falls Church, and two brothers, Robert Hollis of Rockville and Frank Hollis of Chevy Chase.

LOUIS J. HOLLIS

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, I had intended to speak in my 1-minute this afternoon about drugs, but I, too, had a great admiration and respect for Lou Hollis. I did not know that he had passed away. When one of our fine workers here on Capitol Hill dies, unless we mention it here in the well our fellow Americans do not know about the thousands of people in this city who served their country and serve us here in Congress so well with such great devotion and efficiency. Mr. Speaker, Louis Hollis will be sorely missed.

Mr. Speaker, as the gentleman from Ohio [Mr. MCEWEN], the preceding speaker, said, there are thousands of Americans all over this country who have a beautiful picture of the Capitol in black and white, and now lately in color, on their wall with their Senator or their Member of this great body, and they will never know the dedication of that man Louis Hollis who took all those excellent pictures.

DRUGS AND WORLD OPINION

Mr. Speaker, the day before yesterday I had the opportunity to go to Great Britain and appear on their program which is parallel to "Meet the Press" on the subject of drugs. One of the points that came up on the show was that it seems many people around the world think poverty is the sole cause of drug abuse; which does not make sense when you consider that cocaine is a very expensive addiction. However, I had a big problem informing my hosts and guests on that show that Nancy Reagan is correct, wealthy people and middle-class people who used their hard-gotten salaries to buy cocaine are truly accessories to murder. This is a problem that crosses all economic and socioeconomic lines.

BASE CLOSING MEASURE SHOULD BE HANDLED IN CONFERENCE

(Mr. EMERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMERSON. Mr. Speaker, one of the best opportunities we'll have this year to cut wastefull spending in the military may fall by the wayside due to the Democratic leadership's refusal to honor its promise for a floor vote.

The base closing measure, to set up a nonpartisan commission to recommend military bases for closure, was not offered as an amendment to the DOD authorization bill because the Democratic leadership wanted a chance to consider the bill at greater length. That earlier promise now looks more and more like it was designed to derail this popular idea.

For this measure to be successful this year, it must be handled in the conference on the DOD authorization. The Democratic leadership has said that to handle it in conference the House must first debate it and vote on it on the House floor. I urge the Democratic leadership to stop playing politics with this issue and bring this bill to the House floor before the end of the DOD conference.

Mr. Speaker, this issue is much too important to stall around on. Let the House have a chance to vote on this measure before the DOD conference ends.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1158, FAIR HOUSING AMENDMENTS ACT OF 1988

Mr. MOAKLEY, from the Committee on rules, submitted a privileged report (Rept. No. 100-714) on the resolution (H. Res. 477) providing for the consideration of the bill (H.R. 1158) to amend title VIII of the act commonly called the Civil Rights Act of 1968, to revise the procedures for the enforcement of fair housing, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF H.R. 4800, HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATIONS, 1989

Mr. MOAKLEY, from the Committee on rules, submitted a privileged report (Rept. No. 100-715) on the resolution (H. Res. 478) waiving certain points of order against consideration of the bill (H.R. 4800) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1989, and for other purposes, which was referred to the House Calendar and ordered to be printed.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF H.R. 4781, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1989

Mr MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 475 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 475

Resolved, That all points of order for failure to comply with the provisions of clause 7 of rule XXI are hereby waived against the consideration of the bill (H.R. 4781) making appropriations for the Department of Defense for the fiscal year ending September 30, 1989, and for other purposes. During the consideration of the bill, all points of order against the following provisions of the bill for failure to comply with the provisions of clause 2 of rule XXI are hereby waived: beginning on page 2, line 1 through the colon on page 3, line 1; beginning on page 3, line 9 through the colon on page 4, line 7; beginning on page 4, line 15 through the colon on page 8, line 6; beginning on page 8, line 10 through the colon on page 9, line 67; beginning on Page 9, line 13 through the colon on line 24; beginning on page 10, line 10 through the colon on line 19; beginning on page 11, line 1 through the comma on page 14, line 24; beginning with *"Provided,"* on page 15, line 3 through the colon on page 17, line 20; beginning on page 18, line 3 through "$1,434,664,000," on page 25, line 17; beginning on page 25, line 19 through the colon on page 26, line 3; beginning on page 26, line 6 through "1991," on page 30, line 24; beginning on page 31, line 3 through the colon on line 25; beginning on page 32, line 9 through the colon on line 15; beginning on page 33, line 3 through the colon on line 9; beginning on page 34, line 1 through the colon on line 11; beginning on page 35, line 8 through page 38, line 13; and beginning on page 45, lines 8 through 25. In any case where this resolution waives points of

order against only a portion of a paragraph, a point of order against any other provision in such paragraph may be made only against such provision and not against the entire paragraph. It shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Roth of Wisconsin, and all points of order against said amendment for failure to comply with the provisions of clause 7 of rule XVI and with clause 2 of rule XXI are hereby waived. It shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Walker of Pennsylvania, and all points of order against said amendment for failure to comply with the provisions of clause 2(c) of rule XXI are hereby waived, if the motion to rise and report under clause 2(d) of rule XXI is rejected or not offered.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], and pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 475 is the rule making in order two amendments and waiving certain points or order against consideration of the bill, H.R. 4781, the Department of Defense appropriations for fiscal year 1989.

Mr. Speaker, since general appropriations bills are privileged under the rules of the House, the rule does not provide any special guildelines for the consideration of the bill. Provisions related to time for general debate are not included in the rule.

Customarily, Mr. Speaker, general debate time is limited by a unanimous-consent request by the chairman of the Appropriations Subcommittee prior to the consideration of the bill.

Mr. Speaker, the rule waives clause 7, rule XXI against consideration of the bill. Clause 7, rule XXI requires that the relevant printed hearings and report be available for 3 days prior to consideration of a general appropriations bill.

The rule also waives clause 2, rule XXI against specified provisions of the bill. Clause 2, rule XXI prohibits unauthorized appropriations or legislative provisions in general appropriations bills.

The rule provides that where points of order are waived against only a portion of a paragraph, a point of order against any other provision in the paragraph may be made only against such a provision and not against the entire paragraph.

The specific provisions of the bill for which the waivers are provided are detailed in the rule by page and line.

Mr. Speaker, the rule makes in order an amendment printed in the report accompanying this resolution by Representative ROTH of Wisconsin. The rule waives points or order aginst the amendment under clause 7, rule XVI (prohibiting nongermane amendments) and clause 2, rule XXI (prohibiting unauthorized appropriations or legislative provisions in general appropriations bills).

And finally, Mr. Speaker, the rule makes in order an amendment in the report accompanying this resolution of Representative WALKER of Pennsylvania. The rule waives points of order against clause 2(c), rule XXI if the motion to rise and report under clause 2(d), rule XXI is rejected or not offered. Clause 2(c), rule XXI prohibits consideration of amendments to a general appropriations bill which change existing law.

Mr. Speaker, H.R. 4781 appropriates $282.7 billion in new budget authority for activities of the Department of Defense and related agencies for fiscal year 1989. This sum is $556.6 million below the President's request and is $3.6 billion above the sums made available for fiscal year 1988. The $282.7 billion total is within the 302(b) budget allocations.

Funding for military personnel accounts is $78.4 billion, $2.3 billion above fiscal year 1988 and $200,000 above the President's request. The bill allows for the recently approved 4-percent pay raise.

Under title II $85.6 billion is obligated for operation and maintenance activities.

H.R. 4781 appropriates $80.8 billion for procurement; $36 billion for research, development, test, and evalution activities; $1.13 billion for revolving and management funds; $375 million for chemical weapons destruction; and $168 million for related activities.

The legislation does not include any language regarding ABM Treaty interpretation, SALT II Treaty compliance, or nuclear warhead testing. Language is included in the bill which prohibits aid to the Nicaraguan Contras without explicit congressional approval. No funding is provided for Asat testing or for chemical weapons.

Finally, Mr. Speaker, the bill provides $475 million for drug interdiction including procurement of aircraft and patrol boats and funds for operation and maintenance in the Army and Navy.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Massachusetts [Mr. MOAKLEY] has ably explained the provisions of the rule and parts of the bill, and I commend him for his explanation. I want to congratulate the gentleman from Florida [Mr. CHAPPELL], the chairman of the Subcommittee on Defense, and the gentleman from Pennsylvania [Mr. MCDADE], the ranking member of the subcommittee for the fine job they have done in hammering out this defense appropriation bill under the constraints of the budget handicap and also under the Gramm-Rudman legislation.

Mr. Speaker, they have done a Trojan job in bringing to the floor of the House a bill which has very little controversy, if any. Normally when a defense appropriation bill comes to the floor we see a host of Members wanting to participate in the debate but it is my opinion that this bill as hammered out by the committee is one of less controversy than any that has been presented in the 26 years that I have been in the House. Again, my congratulations.

We know how important it is to have a strong defense posture. That is what makes America great and what makes the countries around the world look up to America.

□ 1320

We are in that situation today, having brought ourselves into a position of strength from a position of weakness. This bill appropriates the funds to support that position of strength.

Mr. Speaker, I urge the adoption of the rule and I urge the passage of the bill when it is debated on the floor of the House.

Mr. Speaker, I have no requests for time and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. QUILLEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 364, nays 37, not voting 31, as follows:

[Roll No. 192]

YEAS—364

Ackerman	Beilenson	Brennan
Akaka	Bennett	Brooks
Alexander	Bentley	Broomfield
Anderson	Bereuter	Brown (CA)
Andrews	Berman	Bruce
Annunzio	Bevill	Bryant
Anthony	Bilbray	Bustamante
Applegate	Billey	Byron
Archer	Boehlert	Callahan
Aspin	Boggs	Campbell
Atkins	Boland	Cardin
AuCoin	Bonior	Carper
Baker	Bonker	Carr
Ballenger	Borski	Chandler
Barnard	Bosco	Chapman
Bateman	Boucher	Chappell
Bates	Boxer	Cheney

Clarke	Hughes	Owens (NY)
Clay	Hutto	Owens (UT)
Clement	Hyde	Oxley
Clinger	Ireland	Packard
Coats	Jacobs	Panetta
Coble	Jeffords	Parris
Coelho	Jenkins	Pashayan
Coleman (MO)	Johnson (CT)	Patterson
Coleman (TX)	Johnson (SD)	Payne
Combest	Jones (NC)	Pease
Conte	Jontz	Pelosi
Conyers	Kanjorski	Penny
Cooper	Kaptur	Pepper
Coughlin	Kasich	Perkins
Courter	Kastenmeier	Pickett
Crockett	Kennedy	Pickle
Dannemeyer	Kennelly	Porter
Darden	Kildee	Price
Daub	Kleczka	Pursell
Davis (MI)	Kolbe	Quillen
de la Garza	Kolter	Rahall
DeFazio	Kostmayer	Rangel
DeLay	Kyl	Ravenel
Dellums	LaFalce	Regula
Derrick	Lagomarsino	Rhodes
DeWine	Lancaster	Richardson
Dickinson	Lantos	Ridge
Dicks	Latta	Rinaldo
Dingell	Leach (IA)	Ritter
DioGuardi	Leath (TX)	Roberts
Donnelly	Lehman (CA)	Robinson
Dorgan (ND)	Lehman (FL)	Rodino
Dowdy	Leland	Roe
Downey	Lent	Rogers
Durbin	Levin (MI)	Rose
Dwyer	Levine (CA)	Rostenkowski
Dymally	Lewis (CA)	Roth
Dyson	Lewis (FL)	Roukema
Early	Lewis (GA)	Rowland (CT)
Edwards (CA)	Lipinski	Rowland (GA)
Emerson	Livingston	Roybal
English	Lloyd	Russo
Erdreich	Lott	Sabo
Espy	Lowery (CA)	Saiki
Evans	Lowry (WA)	Saxton
Fascell	Lujan	Scheuer
Fawell	Luken, Thomas	Schneider
Fazio	Lukens, Donald	Schroeder
Fish	Lungren	Schuette
Flake	Mack	Schulze
Flippo	Madigan	Schumer
Foglietta	Manton	Sharp
Foley	Martin (IL)	Shaw
Ford (MI)	Martin (NY)	Shays
Ford (TN)	Martinez	Shuster
Frank	Matsui	Sikorski
Frenzel	Mavroules	Sisisky
Frost	Mazzoli	Skaggs
Gallegly	McCloskey	Skeen
Gallo	McCollum	Skelton
Garcia	McCrery	Slattery
Gaydos	McCurdy	Slaughter (NY)
Gejdenson	McDade	Slaughter (VA)
Gekas	McEwen	Smith (FL)
Gibbons	McGrath	Smith (IA)
Gilman	McHugh	Smith (NE)
Gingrich	McMillan (NC)	Smith (NJ)
Glickman	McMillen (MD)	Smith (TX)
Gonzalez	Meyers	Smith, Robert (OR)
Goodling	Mfume	
Gordon	Michel	Snowe
Gradison	Miller (CA)	Solarz
Grandy	Miller (OH)	Spratt
Grant	Mineta	St Germain
Gray (IL)	Moakley	Staggers
Green	Molinari	Stallings
Guarini	Mollohan	Stangeland
Hall (OH)	Montgomery	Stark
Hall (TX)	Moorhead	Stenholm
Hamilton	Morella	Stokes
Hammerschmidt	Morrison (CT)	Stratton
Hansen	Morrison (WA)	Studds
Harris	Mrazek	Sweeney
Hayes (IL)	Murphy	Swift
Hayes (LA)	Murtha	Swindall
Hefner	Myers	Synar
Henry	Natcher	Tallon
Herger	Neal	Tauzin
Hertel	Nelson	Taylor
Hiler	Nichols	Thomas (CA)
Hochbrueckner	Nowak	Thomas (GA)
Holloway	Oakar	Torres
Hopkins	Oberstar	Torricelli
Houghton	Obey	Traficant
Hoyer	Olin	Traxler
Hubbard	Ortiz	Udall
Valentine	Weber	Wolpe
Vander Jagt	Weiss	Wortley
Vento	Wheat	Wyden
Visclosky	Whittaker	Wylie
Volkmer	Whitten	Yates
Walgren	Williams	Yatron
Walker	Wilson	Young (AK)
Watkins	Wise	Young (FL)
Waxman	Wolf	

NAYS—37

Armey	Dreier	Schaefer
Badham	Fields	Sensenbrenner
Bartlett	Gregg	Shumway
Barton	Gunderson	Smith, Denny (OR)
Bilirakis	Hastert	
Brown (CO)	Hefley	Smith, Robert (NH)
Buechner	Hunter	
Bunning	Inhofe	Solomon
Burton	Lightfoot	Stump
Craig	Marlenee	Sundquist
Crane	McCandless	Tauke
Davis (IL)	Nielson	Upton
Dornan (CA)	Petri	Vucanovich

NOT VOTING—31

Biaggi	Gray (PA)	Miller (WA)
Boulter	Hatcher	Moody
Collins	Hawkins	Nagle
Coyne	Horton	Ray
Dixon	Huckaby	Savage
Duncan	Jones (TN)	Sawyer
Eckart	Kemp	Spence
Edwards (OK)	Konnyu	Towns
Feighan	MacKay	Weldon
Florio	Markey	
Gephardt	Mica	

□ 1339

Messrs. DENNY SMITH, HEFLEY, GUNDERSON, and STUMP changed their vote from "yea" to "nay."

Mr. HUTTO changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RETURNING TO THE SENATE S. 727, CLARIFYING INDIAN TREATIES AND EXECUTIVE ORDERS WITH RESPECT TO FISHING RIGHTS

Mr. ROSTENKOWSKI. Mr. Speaker, I offer a privileged resolution (H. Res. 479) returning to the Senate the bill, S. 727, and ask for its immediate consideration.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 479

Resolved, That the bill of the Senate (S. 727) to clarify Indian treaties, Executive orders, and Acts of Congress with respect to Indian fishing rights, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill be respectfully returned to the Senate with a message communicating this resolution.

The SPEAKER. The gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 1 hour.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution was introduced at the direction of the Committee on Ways and Means to express the opinion of the House that the bill, S. 727, contravenes the first clause of section 7 of article 1 of the Constitution and is an infringement of the privileges of this House to originate revenue legislation. The resolution directs that S. 727 be respectfully returned to the other body with a message communicating this resolution.

S. 727 is a bill dealing with the tax treatment of income derived from the exercise of Indian treaty fishing rights. The other body passed S. 727 on May 13, 1987. The bill is identical to H.R. 2792, as originally introduced and referred jointly to the Committee on Interior and Insular Affairs and the Committee on Ways and Means. Since the House has just passed an amended version of H.R. 2792, it is appropriate to return S. 727 to the other body with the customary "blue slip" because it is a revenue bill which constitutionally should originate in the House.

I urge my colleagues to support this privileged resolution.

Mr. FRENZEL. Mr. Speaker, if the gentleman will yield to me, the minority concurs in the statement and the recommendation of the chairman, the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER. The question is on the resolution.

A resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CHAPPELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill (H.R. 4781) making appropriations for the Department of Defense for the fiscal year ending September 30, 1989, and for other purposes; and that I may be permitted to include tables and other extraneous material.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objections.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1989

Mr. CHAPPELL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4781) making appropriations for the Department of Defense for the fiscal year ending September 30, 1989, and for other purposes; and pending that motion, Mr.

Speaker, I ask unanimous consent that general debate be limited to not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from Pennsylvania [Mr. MCDADE] and myself.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER. The question is on the motion offered by the gentleman from Florida [Mr. CHAPPELL].

The motion was agreed to.

□ 1347

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4781, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

By unanimous consent, the bill was considered as having been read the first time.

The CHAIRMAN. Under the unanimous-consent agreement, the gentleman from Florida [Mr. CHAPPELL] will be recognized for 30 minutes and the gentleman from Pennsylvania [Mr. MCDADE] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. CHAPPELL].

Mr. CHAPPELL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I bring before the House the Defense appropriation bill for fiscal year 1989.

I take this opportunity to thank all the members of the Defense Subcommittee for their advice and indulgence in marking up and reporting out the Defense appropriation bill for fiscal year 1989. It was a group effort and is generally supported in its entirety by all the subcommittee members.

This can be attested to by the fact that there were no separate minority or dissenting views filed in this report.

I want to especially thank the ranking minority member of the subcommittee, JOE MCDADE, for his cooperation and assistance in formulating this difficult bill.

I want to say he has done an outstanding and magnificent job and I congratulate him and thank him. It was not an easy task to draft the bill before you today.

We provide funds in this bill for all of the necessary programs while keeping the overall funding level within the guidelines expressed by the summit agreement.

We have brought you a minimal level bill acknowledging the need to show restraint in overall Government spending.

This bill meets the budget summit agreement levels and is in compliance with our 302 allocation levels for both budget authority and outlays.

Let me point out that the bill before you has included funding for many programs that are not authorized by the Defense authorization bill which is being considered in the conference committee at the present time.

In order to get to the floor today, we had to mark up several weeks ago. We were, therefore, unable to wait until the Defense authorization bill cleared conference before completing action on the bill before you today.

When we go to conference we will conform to the authorization agreement.

As I have indicated earlier, this bill provides budget authority and outlays at the exact levels of the 302 allocation. If amendments are offered to increase funds, offsetting decreases must be proposed for budget authority in order for us to remain in compliance with our 302 allocations.

Let me summarize the bill for you if I might. The bill before you provides total obligational authority of $282.6 billion which is $3.6 billion above the fiscal year 1988 funding level and $557 million below the President's budget request. We have fully funded the readiness accounts and have attempted to maintain economical production rates in order to keep unit costs down and save taxpayers' dollars.

□ 1350

Mr. Chairman, let me now briefly cover what is recommended in the Defense appropriation bill before us.

Mr. Chairman, pages 4, 5, and 6 of the committee's report list a number of significant and highly visable programs addressed in the bill, and I advise the Members to read these highlights to easily identify programs of interest to them.

Let me turn to the account on military personnel. The bill recommends $78.4 billion for military personnel or $2.3 billion above last year's level and roughly the budget request level. These funds provide 2,138,300 active duty military personnel and 1,173,589 in selected Reserve levels.

The bill provides the funding levels needed to finance a 4-percent military pay raise and a 2-percent civilian pay raise. I realize several different proposals for pay are being considered, such as 3 percent for both military and civilians, but until these issues are settled in conference I would hope we can let this bill stand as it is and we can finalize our funding levels in conference based upon the agreement that will be worked out in the authorizing bill.

Mr. Chairman, I turn now to the operation and maintenance account. The bill recommends $85.7 billion for the operation and maintenance accounts or $5.4 billion above last year's level and $84 million above the budget request.

The O&M accounts provide funds for the maintenance of equipment and facilities, fuel, supplies, and repair parts for weapons and equipment. These accounts, along with military personnel, provide the readiness needed to properly man and maintain the new weapons systems that are coming on line. If we shortchange these accounts, we will not adequately man the tanks, planes, and ships, and the proper maintenance will not be conducted. If we reduce these accounts too much, we should also stop buying additional equipment because it makes no sense to put new equipment in the field if it cannot be operated in the proper fashion.

Unfortunately, these accounts have the biggest impact on outlays in the first year, and they become a prime target when outlay reductions are needed. We have funded these accounts at the full authorized levels and have even added funds above the budget and authorization to cover dollar shortfalls because of the current exchange rates being experienced overseas.

Mr. Chairman, I turn now to the procurement account. The bill recommends $80.7 billion in total obligational authority for procurement, a reduction of $3.5 billion below last year's level but an increase of $798 million above the budget request. Some of the so-called big ticket items recommended in the bill are as follows:

The bill recommends $795 million to purchase 72 AH-64 Apache attack helicopters.

The bill recommends $1.1 billion to purchase 545 M-1 Abrams tanks.

The bill recommends $2.2 billion to purchase 84 F/A-18 aircraft.

The bill recommends $1.1 billion to purchase one Trident submarine.

The bill recommends $1.2 billion to purchase two SSN-688 nuclear attack submarines.

The bill recommends $2.1 billion to purchase three DDG-51 destroyers.

The bill recommends $1.4 billion to purchase 42 F-15 aircraft.

The bill recommends $2.5 billion to purchase 180 F-16 aircraft.

The bill recommends $900 million to purchase four C-17 aircraft.

The bill recommends $807 million to purchase 12 MX missiles.

Mr. Chairman, let me turn now to the research, development, test, and evaluation account. The bill recommends $36.1 billion in total obligational authority for research, development, test, and evaluation, which is $938 million below the fiscal year 1988 level and $2 billion below the budget request. Some of the specific recommendations in the bill are as follows:

The bill recommends $561 million for continued development of the Trident II strategic missile system.

The bill recommends $702 million for development of the advanced tactical fighter.

The bill recommends $733 million for ICBM missile modernization. That is the MX and the small ICBM.

The bill recommends $941 million for continued development of the C-17 transport aircraft.

The bill recommends $3.2 billion for the strategic defense initiative, which is the House-authorized level.

I turn now, Mr. Chairman, to the account relating to the National Guard and Reserve Forces.

The bill recommends over $19 billion for the National Guard and Reserve Forces, which includes add-ons above the budget request of $1.2 billion, mostly for equipment. I refer the Members to pages 9 through 14 of the committee report which set forth the funds provided for the National Guard and Reserve Forces. The committee has always been a staunch supporter of the Guard and Reserve, and we continue to try to update the equipment available to these forces.

On intelligence matters, the committee reviews the intelligence and intelligence-related activities budgets with the same intensity and completeness as is afforded other portions of the Department of Defense budget. Because of the highly sensitive nature of these activities, the results of the committee's budget review are published in a separate detailed and comprehensive classified annex to this report and cannot be discussed on the floor.

Mr. Chairman, I remind the members of the committee that the majority of the thousands of line items in the budget remain untouched by the bill, and they are funded at the budget request level or the authorized levels.

Mr. Chairman, I realize that this bill is not going to please everyone. I personally think it is a very fine bill. I think it gives us a good balance in our defense efforts, and, Mr. Chairman, I recommend the support of the Members on final passage.

Mr. McDADE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in my view we have brought before the House a good bill, and while I welcome the opportunity for debate and discussion, in my view this bill can and should be adopted with dispatch and without deep division.

Not that it is perfect—it is not. We have not been able to do everything that I think our security demands and our worldwide commitments require. But the important thing is that we have tried to write a responsible, consensus bill, and I think we succeeded.

As evidence of this—I can't think of another subcommittee or committee in the Congress that features the diversity of opinion and views that we have on the Defense Subcommittee. Believe me, there is always wide ranging discussion when we mark up.

However, after many hours and days of effort we bring before you a bill which enjoys the unanimous support of the subcommittee, and which was agreed to without controversy by the full Appropriations Committee.

This is a consensus product, which as the chairman indicated reflects both the position of the House and, more importantly, an effort to get the most defense out of every defense dollar.

This is the result of a great deal of work and cooperation by all members of the Defense Subcommittee, on both sides of the aisle, and I want to commend all the Members. Also, we have been fortunate to have the services of our tremendous committee staff, and I want to acknowledge their efforts and support to me and the Members on this side. I would like to express my gratitude to the chairman of our subcommittee, the distinguished gentleman from Florida, BILL CHAPPELL, for his evenhandness and his leadership throughout our deliberations. He's done an excellent job.

Mr. Chairman, as we all are aware last year's budget summit set this year's funding level for defense. I can assure the membership that this bill complies with the summit agreement. We track the budget resolution and we are about as close to our 302(b) allocation as one could imagine—$1 million under for both budget authority and outlays.

It has been easier in some ways to write this bill, because of the summit—from the first day of hearings, we knew how much money we would have to work with and this helped expedite the process. Despite this relative certainty, however, writing this bill has not been an uncomplicated task by any means.

I am compelled to remind all Members that even though we comply with the summit, this is the fourth straight year that Defense appropriations will decline, in real terms. In this bill we provide roughly 10 percent less, after inflation, than we did in 1985.

And for this fiscal year alone, to comply with the summit the Department of Defense had to cut its planned budget by nearly $33 billion, a 10-percent reduction.

This forced the administration to confront many difficult tradeoffs. I think all Members will concede that under Frank Carlucci, the Department not only considered these tradeoffs, but stepped up and made some hard choices.

As a result the budget we were sent in February had a number of stark recommendations:

An active duty troop reduction of 27,000;

The drawdown of 16 Navy frigates, over 600 Army helicopters, and two Air Force fighter wings from existing force structure; and

The cancellation of over a dozen weapons programs.

Secretary Carlucci has been up front about how he regards these proposals—making it clear that these cuts were proposed only because of fiscal constraints—not because of any change in commitments or security needs.

But cuts had to be made, and they were. What the DOD did do was forward a budget organized around three principles—in the words of Secretary Carlucci, these are "people"; "readiness"; and "efficient acquisition."

I think it is safe to the Congress, in general, has agreed with these priorities, and our subcommittee has worked hard to produce a bill that funds this approach.

For example: If the 1970's taught us anything about defense priorities it is that good people and combat readiness can be lost faster than anything else, and take the most effort and money to restore.

The Pentagon appears to have recognized this. In its request, the only areas that show significant growth over last year are, indeed, the personnel and readiness accounts.

Our subcommittee supports this emphasis, and, in fact, in both the military personnel and operations and maintenance accounts we have not only fully funded but have recommended increases over the administration's request.

Military personnel accounts receive an increase of $2.25 billion over last year, including a 4-percent military pay raise and increases in housing allowances.

In operations and maintenance, we recommend an overall increase of $5.4 billion from last year, nearly 7 percent growth. This includes a civilian pay raise of 2 percent. Within this area, we have protected the repair and maintenance activities carried out in Army depots, Navy ship repair facilities, and Air Force logistics centers.

We have not neglected quality of life issues, either: For example, we have added $229 million over the budget to improve military medical care and staffing levels.

People and readiness—these are part of the real success stories of the 1980's in defense and I believe we have done a lot in this bill to ensure we don't squander the improvements made since the late 1970's.

This bill also follows through on the Department's third priority, trying to make more efficient and productive choices in procurement of equipment. We have made every effort to avoid costly production stretchouts; and where it made sense, and where we

could find the funds, we have increased procurement rates and looked to multiyear contracting.

I can point to examples of this in nearly every procurement account. Look at the Army—we have increased funding and approved multiyear procurement of its two premier weapons systems—the M-1 tank and the Apache attack helicopter. These sorts of recommendations are throughout the bill.

In keeping with our emphasis on readiness, we have protected and in some cases added funds over the request for some of the less glamorous procurement programs, such as ammunition for the Army and Marine Corps, air-to-air missiles for the Navy.

I could go on and on. There are a lot of success stories and good things in the bill and report before you. I can't be honest and say I am comfortable or satisfied with everything we have recommended, but, on balance I believe we have put together a credible measure, recognizing that we don't have the money to do everything.

It hasn't been easy. We have had the same frustration and problems, as all Members and committees have faced, in trying to address valid national needs in the face of fiscal constraints.

And while this bill, certainly, has more than its share of hard choices they are only the first steps of what promises to be a very difficult and prolonged process over the next few years.

For those who are upset with some of this year's decisions—be it a weapons cancellation, or manpower cuts affecting an installation some where in the country—let me tell you, it is going to get tougher.

The Pentagon realizes it has to take into account the overall deficit problem and it is, perhaps belatedly, coming to grips with decisions which must be considered in the face of limited resources.

I don't know which direction this will take us—be it more manpower cuts, program terminations shifts in force structure—but I can only hope we all agree that the Congress has to work with the Defense Department, to try and fashion a steady and predictable effort.

Stability is the surest way to save money in defense, and if we want to make informed, sensible decisions to save money then we have to be prepared to eliminate the rollercoaster, up and down defense spending syndrome as we look forward to the next administration.

This bill provides a sound basis for beginning this process. It deserves, and I ask for, an overwhelming vote of support from the House.

□ 1400

Mr. CHAPPELL. Mr. Chairman, I yield such time as he may consume to the gentleman from Wisconsin [Mr. ASPIN].

Mr. ASPIN. Mr. Chairman, I would like to enter into a colloquy with the chairman of the committee.

Mr. Chairman, I note that the major arms control provisions the House approved as part of the Defense authorization bill, in particular the provisions relating to the ABM Treaty, SALT II, nuclear testing and the depressed trajectory tests, are not contained in the Defense appropriation bill before us today.

It is certainly my intention and hope to resolve satisfactorily those issues in the authorization conference with the Senate, discussions which of necessity will include informal consultations with the administration.

I am concerned, however, that some in the Senate, and perhaps in the administration, will view the absence of these key provisions in the Defense appropriations bill as it passes the House as an incentive to not negotiate very seriously in the authorization conference. This is a matter that we and the House leadership have discussed, and it would be useful to explain at this time how we intend to handle it.

Mr. CHAPPELL. Mr. Chairman, I thank the gentleman for his remarks, and I am pleased to have yielded to him for the opportunity of expressing those thoughts, and now let me express mine on that subject.

The fact that the arms control provisions are not included in this appropriation bill does not indicate a lessening of interest in them or support for their enactment. Administration officials should not attach any significance to their absence at this time, and I hope the Senate will have the same understanding on this point.

Indeed, the administration and Members of the Senate should not assume they can use the appropriations process to bypass the consideration of these issues in the authorization bill where they are appropriately under consideration.

Mr. Chairman, I have pledged my full support for a resolution of these provisions in a manner acceptable to the House. To carry out this pledge in the event that the Defense authorization bill is not signed into law when the Defense Appropriations Conference begins, I will support proper consideration of the arms control provisions at that time by introducing them into the appropriations conference consideration.

Further, I will strongly oppose completion of the Defense appropriations conference unless these provisions are resolved in a manner that is satisfactory to the House.

Mr. ASPIN. Mr. Chairman, I thank the gentleman from Florida [Mr. CHAPPELL] very much for those assurances, and I would like to say that I very much appreciate working with him on these issues.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. ASPIN. Mr. Chairman, I have one other matter, but I yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, I want to express my appreciation both to the chairman of the Authorization Committee and to the subcommittee chairman for that assurance from many of us who have been working on these arms control provisions which by now clearly reflect a very strong majority in the House that has been tested year after year. It is very reassuring for us to have the sentiments of the two gentlemen, and let me say that I express particularly my appreciation to the chairman of the subcommittee for giving us this really extraordinary commitment that he will be available as a kind of a fallback if there is a problem elsewhere. For him to do that in this context means a lot, and, since he is taking over the chairmanship, he has shown a great deal of consideration and thought toward other Members and those of us who care about arms control.

Mr. Chairman, I appreciate very much the commitment that he is giving to us now, and we are glad to have him.

Mr. ASPIN. Mr. Chairman, I would like to echo the comments of the gentleman from Massachusetts [Mr. FRANK]. I think that what he said here about the gentleman from Florida [Mr. CHAPPELL] is absolutely correct. Just one further item, Mr. Chairman.

Mr. Chairman, the Committee on Armed Services and the Committee on Appropriations have been consulting this year as we have proceeded to act on legislation relating to the fiscal year 1989 budget of the Department of Defense. I am pleased to be able to report that, as a result of those consultations, that I believe that we will have a better defense program than could have been achieved in the absence of such consultation.

Mr. Chairman, last year we had a major problem with the unauthorized appropriations. There were a number of reasons that these occurred, and it is not necessary to repeat those reasons now. But, as a consequence of what happened last year, there were discussions involving the Speaker, the Committee on Armed Services and the Committee on Appropriations. As a result of those discussions there was an agreement for the Committee on Armed Services and the Committee on Appropriations to work together to avoid the problems that we have encountered in the past.

For the Committee on Armed Services' part we moved early this year to report and pass an authorization bill so that the Committee on Appropria-

tions would be able to act with the knowledge of authorizing actions.

□ 1410

The conference on the authorization bill is nearing completion and I expect to bring a conference report to the House before the end of the month.

The Appropriations Committee has, understandably, proceeded to report a Defense appropriations bill before completion of action on the authorization bill. However the committees have worked together so that there is knowledge and understanding of the actions being taken. I am pleased that in those instances where the reported appropriations bill exceeds the authorization contained in the Housed passed authorization bill that the appropriations have been made subject to authorization.

As a part of the agreement worked out earlier this year the Armed Services Committee will be able to participate, as ex-officio members, in the conference on the appropriations bill, just as the Appropriations Committee has had the opportunity to participate during conference on the authorization bill. This process will provide the opportunity for discussing and resolving differences that may remain between the authorization and appropriations bills.

Mr. CHAPPELL. Mr. Chairman, I take this time to express my appreciation to the chairman of the Armed Service Committee and to the membership of that committee and to our own committee in working out the sticky problems that we have had between our committees.

I pledge as I have in the past and our Appropriations Committee pledges to this House that we will work together for the good of America and do those things for this institution in the way that they ought to be done in a good wholesome manner.

Mr. ASPIN. Mr. Chairman, I thank the gentleman.

Mr. McDADE. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida [Mr. YOUNG].

Mr. YOUNG of Florida. Mr. Chairman, despite the fact that this represents a considerable reduction in the President's budget request, I think we have provided a lot of defense for the defense dollar. I think the taxpayers will be very happy to hear what they are getting for this year's dollar.

I would like to make several points about the bill itself and to say that of the thousands and thousands of items in this bill, they have all been addressed individually. They have been looked at very closely by the chairman and the ranking member and the members of the committee, and especially the staff.

I would like to compliment all the members of the committee, especially the chairman and the ranking member and the staff, for the personal scrutiny that every line item gets. It takes an awful lot of time to do that.

We were dealing with a summit figure set by the so-called summit late last year. It was interesting, during our hearings I asked the various Secretaries of the services and the Chiefs of Staff, the members of the Joint Chiefs and others, how much input did the Defense Department, the civilian side, have over the military side in agreeing to this summit figure. I was really amazed when I found they had zero input, that the figure determined by the summit was a political figure, rather than a figure based on the needs of the national defense or the threat that might face our national defense.

I think we can get away with that this year, but I hope that does not become a practice, because I do not believe that we can make our defense posture established on a political figure, as opposed to the actual needs.

I want to say, Mr. Chairman, that in this bill we all hear about the big issues. We hear about the SDI and we hear about the Stealth bombers. We hear about the nuclear missiles and things like this, but there are quite a number of issues in this bill addressed by this bill and funded by this bill that go to the area of family life, the quality of life in the service, the quality of family life in the service. I would like to mention just a couple of those.

There is medical care, for example. Several years ago this committee began moving strongly in the area of improving medical facilities, not only for the people in the uniformed services, but their families who are eligible for military treatment.

We also began to provide more immediate medical care for those who might be injured in a battle or some hostility. We have done a good job in that and this bill continues that job going.

We had a little bit of a problem with some new rules being decided by CHAMPUS. Some of these rules would have created problems for civilian hospitals throughout our country, and especially children's hospitals and major hospitals offering large children's departments. Through this bill we have been able to take care of that problem. We have been able to separate that issue so that the CHAMPUS regulations do not create serious problems for children's hospitals all over America.

Then there is one more thing I would like to mention, Mr. Chairman, that I think is really important. I had the privilege of working on this issue for quite a long time with the able assistance and partnership of my friend, the gentleman from Oregon [Mr. AUCOIN]. The medical community has developed a new procedure for dealing with blood diseases, diseases like leukemia, neuroblastoma, and other malignancies in the blood. It is called bone marrow transplant. It has been dramatic in the way that it has helped save lives since the procedure was created, or since the procedure was discovered.

We had a problem with bone marrow transplants in that you have to have a donor whose marrow matches the marrow of the person receiving the transplant. The best way to accomplish this is through a donor who is a sibling, a brother or a sister or an immediate parent.

We have been able to create a bone marrow registry using Department of Defense moneys funded in this bill through the U.S. Navy to set up a bone marrow registry that is in effect this year for the first time. Now people who need this dramatic new procedure, the bone marrow transplant, rather than having to wait a year or 2 years to find someone whose bone marrow matches, can now go to this registry and within just a few weeks find a donor. Already this year 14 people have had these lifesaving procedures, procedures that just a few years ago did not exist and just a few years ago those people would not have survived, and they are living today because of this procedure, a nonlethal part of this bill.

Many things in this bill are for the quality of life, not only for the military, but for our civilian population.

Mr. Chairman, I could go on and on and recite a lot of these types of issues in this bill that the average person never hears about, but they are in this bill and I am very pleased that they are and I urge support for this legislation.

Mr. CHAPPELL. Mr. Chairman, I yield 4 minutes to the gentleman from Washington [Mr. DICKS].

Mr. DICKS. Mr. Chairman, I am pleased to join my colleagues on the Defense Appropriations Subcommittee in recommending this bill to the House. I want to compliment the work done by our chairman, the gentleman from Florida [Mr. CHAPPELL], and the ranking minority member, the gentleman from Pennsylvania [Mr. MCDADE], in working with all the subcommittee members in crafting this legislation, and I also want to thank our very competent and professional staff, who once again have identified areas of potential savings as well as areas that need increased attention in meeting our security goals.

Our task this year was not to debate how much should be allocated to defense; that was resolved in the budget summit agreement last fall, but we have been tasked with an even more important charge; that is, to decide how funds should be allocated among demands that go far beyond the funding made available in this bill.

In this respect, I am confident that the House will affirm our judgment. Our first priority was to adequately fund the readiness accounts in the bill, military personnel and operations and maintenance. This bill reflects that priority by providing an increase over last year in these accounts of some $7.6 billion, while reducing procurement and research and development accounts by some $4.3 billion.

That is not to say that we do not face sacrifices on the readiness side of the equation. The pressures on these accounts will only increase in the years to come. This is the reason that I believe that we must make a commitment to sustained, modest growth in defense investment, along with a commitment to pay for that investment.

Mr. Chairman, I say this because I feel rather strongly that we have made significant improvements in our overall defense posture over the last 6 or 7 years, and I would hate to see us allow these improvements to erode because we simply do not have the resources to keep those divisions ready and to have the equipment and the personnel taking care of that, which is so important.

On the hardware side of the ledger we have tried to make reductions in lower priority programs while maintaining economic procurement quantities for higher priority items including the use of multiyear procurement on items such as the CH-47 and AH-64 helicopters, the F-16, the AV-8B Harrier, and the M-1 tank chassis.

We have made every effort to coordinate this legislation with the will of the House expressed during consideration of the Defense authorization bill last month. This is the case on both ICBM modernization and funding for the strategic defense initiative.

Dealing with Defense spending in a time of fiscal austerity is not an easy task. We have had to forgo a number of programs that had considerable merit, simply as a result of budget constraints. Try as we might it was impossible to avoid cases where programs will inevitably be stretched and costs increased. But in many cases programs have encountered problems that make it better to slow down now and fix them rather than to go forward and hope to take care of problems down the line.

Finally, I am pleased that the entire process is moving this year in a manner that allows us to bring this bill to the House in a timely manner. I am optimistic that we can complete this process expeditiously, and House approval of the bill today will be an important step in that effort.

Mr. McDADE. Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Chairman, I had hoped to offer several amendments to the bill before us today to address this Nation's No. 1 mental disorder, phobias, and their effect on our military readiness. However, under the rule I am precluded from doing this.

The thrust of my amendments were to direct the Secretary of Defense to require that all recruits and active duty personnel who undergo medical physical examinations, either at a military entrance processing station or at the time of a required regular physical examination be provided with a description of phobias and panic attacks and be specifically asked by a physician or other qualified medical personnel whether they suffer from a phobia or panic disorder.

My second amendment would have required the Secretary of Defense to develop regulations, implement procedures, and provide necessary facilities to identify, treat, and rehabilitate members of the Armed Forces who suffer from phobias or panic disorders.

Let me say that I shall be dropping a bill into the hopper in the very near future which will address my concerns; however, in the interim let me share a little background with the Members of this body. Needless to say, we are all aware of the death of Navy Airman Recruit Lee William Mirecki, and share in the sorrow over this young man who died so tragically during an air-sea rescue training exercise in Pensacola this past March. However, I am not here today to discuss the particulars of that case which is in litigation; but rather, to discuss the Airman Mirecki case as it pertains to phobias in the military.

Some of you may be aware that for a number of years I have been the advocate for phobics in the Congress. In 1985, at my urging, the House Energy and Commerce Subcommittee on Health and the Environment, on which I served, held a congressional hearing on the subject of phobias which affect one out of eight people. Phobias are not selective. They affect both children and adults and do not differentiate between socioeconomic or educational levels.

During our hearing we heard of tragedy and we heard of success. We heard of the lack of adequate treatment which brought about suicide and we heard of those people who couldn't leave their homes for years, but were lucky enough to obtain effective treatment, and are now functioning well and are contributing members of society because they received state of the art phobia treatment.

I have had phone calls and letters from all over the United States from people who didn't realize they were suffering from phobias until they read a news account of the congressional hearing. Many of these people had been to numerous doctors who never properly diagnosed their phobia, but instead sent then on their way with bottles of tranquilizers and diagnoses ranging from depression to you name it. It wasn't until they read or saw something on television that they were able to put two and two together and realized they were phobics. It was only then that they were able to get the proper treatment for their phobias.

At the time of the hearing we did not discuss phobias as they might relate of the military. With Airman Mirecki's death I am now calling for immediate action to determine how phobias are being dealt with in the military.

It is fairly obvious that with one out of every eight people afflicted with phobias, this problem is as serious in the military as it is in the general nonmilitary population. The implications of debilitating phobias to our military readiness is serious. In this light, I have directed letters to House Armed Services Chairman LES ASPIN and Chairman BEVERLY BYRON, who chairs the Subcommittee on Military Personnel and Compensation, urging them to convene a hearing on phobias in the military.

As I wrote in my letter to them we need to explore the availability of state of the art treatment, the expertise of military health care deliverers in dealing with phobias and panic disorders, and what steps are being taken to educate military personnel on this very serious problem.

Mr. Chairman, I note in the committee report to accompany H.R. 4264, the National Defense Authorization Act for fiscal year 1989, on pages 265 and 266, the Armed Services Committee's concern over the lack of counseling programs for service members with a pathological gambling disorder. The committee is so concerned that it directs the Secretary of Defense to provide a report by December 31 of this year, on the feasibility of establishing gambling treatment programs within military health facilities or family counseling centers on military installations.

Yes, Mr. Chairman, as I read the report through there is not a mention of phobias—this Nation's No. 1 mental disorder. The report keeps mentioning medical readiness yet they forgot phobias and panic disorders.

In the committee report that accompanies the bill before us today, it is stated on page 29 that wartime care is the most essential mission performed by the military medical community. I'll but that; however, active duty personnel suffering from debilitating phobias or panic disorders will not be able to perform their wartime assignments; that I can guarantee—unless they receive treatment and the sensitivity level of their superiors are raised.

Let me move onto the specific case of Airman Mirecki. Press accounts indicate that Airman Mirecki's phobia

centered on a fear of being grabbed and pulled underwater from which he suffered since age 5. Capt. Delroy Hire, a forensic pathologist at Pensacola Naval Hospital considers Airman Mirecki's death a homicide. He said Airman Mirecki's fear of being pulled under water triggered a phobia which in turn caused his larynx to close, keeping water out but also cutting off air, that resulted in cardiopulmonary arrest and drowning. I can't imagine a more painful and tragic way to meet death.

In the Airman Mirecki case it is alleged that a military flight surgeon said he was unfit for the rescue exercise because of his phobia, yet this decision was overruled by a military psychologist. One has to ask whether the psychologist knew what phobias were and how to deal with them or whether there was an attitude of "get back to your exercise and be a man." I assure you that from information that I have been given by phobics, as well as specialists in the treatment of phobias this tactic doesn't work when a phobic suffers from severe panic attacks.

I have also directed a letter to Secretary of Defense Frank Carlucci posing a number of questions on how the military treats phobias, the availability of treatment, and so forth. In discussions with members of the military and after looking over the various required military medical forms for recruits I see that there is nothing on the three forms—which I include as part of the RECORD—that address phobias. Additionally, I am told there is nothing in the military medical procedures requiring a military doctor to ask about specific mental health disorders at all. The questions on the applicant medical prescreening form merely ask whether one has been treated for a mental condition. This is certainly general and not sufficient since many phobics may never have sought treatment and like many other people haven't connected their discomfort with a possible phobia.

I'm told that if a service recruit admitted to having a phobia he would be evaluated and then possibly sent for a psychiatric evaluation to see if the military job he was seeking was compatible with his phobia. However, he is never asked whether he might have a phobia. Obviously someone suffering from claustrophobia probably would have difficulty with service on a submarine, and that individual who was afraid of heights wouldn't be particularly comfortable with parachuting or possibly with flying.

In summation, the health of our Armed Forces is of paramount importance and certainly vital to our military readiness. Each recruit and any other member of the military who may develop a phobia well into their career may be faced with a combat situation. This means that reasonably quick identification and immediately available effective medical treatment must be available.

It should be kept in mind that it isn't only recruits with whom we are concerned since those men and women who have been in the service for sometime can also be afflicted with phobias.

The death of Airman Mirecki as tragic as it is should not be in vain. The sensitivity of members of the military medical corps as well as training personnel must be heightened in order that such a tragedy may never have an opportunity to occur again. We can't turn our backs on this problem of phobias. It doesn't go away if you ignore it. The members of our military deserve better.

There is an irony in Airman Mirecki's death and that is that one of the principle reasons he enlisted in the Navy was so that he could attend college to study psychology. It is ironic that that discipline would have required him to study phobias—the very cause of his death.

Mr. Chairman, I urge the Members of this body to join me in pushing the Department of Defense to address this problem, and to push for an early hearing on this serious medical problem by the Armed Serices Committee. I believe the men and women serving this country deserve the best medical care available.

Mr. Chairman, I include the following sample forms and correspondence:

APPLICANT MEDICAL PRESCREENING FORM

Authority: Sections 505, 510, and 3012, Title 10, U.S. Code. Principal purpose: To speed your medical examination processing by identifying possible medical problem areas and to aid the medical staff in determining your eligibility and physical capabilities. To prepare military service applicants for medical processing by identifying documents or medical history required. Disclosure: Voluntary; failure to provide the information requested will stop further processing of your enlistment application.

PART I. PROCESSING REQUIREMENTS (RECRUITER COMPLETES—VERIFY PERSONAL DATA ENTERED)

1. a. Armed service processed for: Army, Navy, Marine Corps, Air Force, Coast Guard.

b. Service component: Regular, Reserve, National Guard.

2. Name of applicant (Last, First, Middle).
3. Date of birth (YYMMDD).
4. Social Security Number.
5. Height (actual) (inches).
6. Weight (actual) (lbs).
7. Max Wt allowed (lbs).
8. Date screened (YYMMDD).

PART II. MEDICAL HISTORY (APPLICANT)

Check each item—explain "yes" and "unsure" answers in item 16.

9. Physical impairments—Yes, no, unsure:
Have you ever had or have you now:
a. Back trouble.
b. Had trouble or loss of hearing.
c. Eye trouble, injury or illness.
d. Any deformities of, or missing fingers or toes.
e. Any painful or "trick" joints or loss of movement in any joint.
f. Impaired use of arms, legs, hands and feet.
g. Have loss of vision in either eye.

10. Corrective devices—Yes, no, unsure:
Do you:
a. Wear braces on your teeth.
b. Wear contact lenses or glasses.
c. Wear a hearing aid.

11. Diseases—Yes, no, unsure:
Have you ever had or have you now:
a. Hepatitis.
b. Rheumatic fever.

12. Federal Government Actions—Yes, no, unsure:
Have you ever:
a. Been rejected for military service.
b. Been discharged from military service for mental, physical or other reasons.
c. Do you receive or have you applied for disability from any Federal Agency.

13. Treatment of illness/injury—Yes, no, unsure:
Have you ever:
a. Taken any medication.
b. Been hospitalized.
c. Had bones surgically repaired using pins screws or plates.
d. Had or have you now any illness or injury including broken bones which required treatment by a physician/surgeon, hospitalization of a surgical operation.

14. Medical conditions—Yes, no, unsure:
a. Do you have any difficulty standing for a long time.
Have you ever:
b. Been treated for a mental condition.
c. Been a sleepwalker since age 12.
Have you ever had or have you now:
d. Addiction to drugs or alcohol.
e. Allergies.
f. Asthma or respiratory problems.
g. Bedwetting since age 12.
h. Epilepsy or seizures of any kind.
i. Other medical problems or defects of any kind.

15. (Females only) date of last menstrual period (YYMMDD).

16. Explanation of "yes" and "unsure" answers: Describe problem, give age at time of problem, name of doctor and or hospital where treated, and your current status regarding that problem.

PART III. CERTIFICATION BY APPLICANT AND RECRUITER

Warning: The information you have given constitutes an official statement. Federal law provides severe penalties (up to 5 years confinement or a $10,000 fine or both), to anyone making a false statement. If you are selected for enlistment based on a false statement, you can be tried by military courts-martial or meet an administrative board for discharge and could receive a less than honorable discharge that would affect your future. WARNING.

a. Applicant. I certify the information on this form is true and complete to the best of my knowledge and belief, and no person has advised me to conceal or falsify any information about my physical and mental history.

Applicant's signature.
Date signed (YYMMDD).

b. Recruiting Representative. I certify all information is complete and true to the best of my knowledge. I have conducted the medical prescreening requirements as directed by service regulations.

Name of recruiting rep. (Last, First, M.I.).
Pay grade of recruiting rep.
Signature of recruiting rep.
Date signed (YYMMDD).

PART IV. MEDICAL PROCESSING INSTRUCTIONS TO APPLICANT

(Rctg Rep Check Blocks—Applicant Initials.)

The Armed Forces Examining and Entrance Station (AFEES) or other military medical facility will conduct a thorough medical examination. You should provide any medical records or documents regarding illness, hospitalization, injuries, treatment, or surgery which may be required/requested by the examining physician. The items below apply specifically to you and represent requirements of the medical staff. Please initial each checked item in the blank provided to indicate that you understand.

Preparation for Medical Examination

Instructions

1. Take medical documents as discussed.
2. Take eye glasses.
3. Wear contact lenses. Also take your eye glasses with you or a statement from the optometrist/ophthalmologist of visual acuity and eye glass refractive error. Statement must be less than one year old.
4. Bring a statement from your orthodontist saying that the braces you are wearing will be removed at your expense and active treatment ended before your active duty date.
5. Males wear undershorts; females wear bra and panties for medical examination.

Acknowledgements

1. I understand that I will undergo a pelvic/rectal examination. (females only).
2. My medical examination may take more than 1 day if tests are required.
3. I've been briefed on the processing procedures and I understand them.
4. I must lose — lbs. before further processing can take place.
5. I appear to be ineligible for further processing for the following reasons:

_____.

_____.

Note: In questionable cases, use DIAL-A-MEDIC procedures to call or forward this form and other documents to the AFEES Chief Medical Officer through the service rep. prior to scheduling a medical examination.

PART V. MEDICAL OFFICER'S COMMENTS

Based on information provided, further processing is: Authorized, not justified, deferred pending review of additional documentation.

(Attach supplemental page for remarks)

Signature AFEES medical officer.

Date signed (YYMMDD).

[Standard Form 88, Revised 10/75 General Services Administration, Interagency Comm. on Medical Records, FPMR 101-11.806-8]

REPORT OF MEDICAL EXAMINATION

1. Last Name-First Name-Middle Name.
2. Grade and Component or Position.
3. Identification No.
4. Home Address (Number, street or RFD, city or town, State and ZIP Code).
5. Purpose of Examination.
6. Date of Examination.
7. Sex.
8. Race.
9. Total Years Government Service: Military Civilian.
10. Agency.
11. Organization Unit.
12. Date of Birth.
13. Place of Birth.
14. Name, Relationship, and Address of Next of Kin.
15. Examining Facility or Examiner, and Address.
16. Other Information.
17. Rating or Specialty.

Time in This Capacity (Total).

Last Six Months.

CLINICAL EVALUATION

Normal (Check each item in appropriate column; enter "NE" it not evaluated.) Abnormal.

18. Head, Face, Neck and Scalp.
19. Nose.
20. Sinuses.
21. Mouth and Throat.
22. Ears—General (Int. & ext. canals) (Auditory acuity under items 70 and 71).
23. Drums (Perforation).
24. Eyes—General (Visual acuity and refraction under items 59, 60 and 67).
25. Ophthalmoscopic.
26. Pupils (Equality and reaction).
27. Ocular Motility (Associated parallel movements, nystagmus).
28. Lungs and Chest (Include breasts).
29. Heart (Thrust, size, rhythm, sounds).
30. Vascular System (Varicosities, etc.).
31. Abdomen and Viscera (Include hernia).
32. Anus and Rectum (Hemorrhoids, fistula) (Prostate, if indicated).
33. Endocrine System.
34. G-U System.
35. Upper Extremities (Strength, range of motion).
36. Feet.
37. Lower Extremities (Except feet) (Strength, range of motion).
38. Spine, Other Musculoskeletal.
39. Identifying Body Marks, Scars, Tattoos.
40. Skin, Lymphatics.
41. Neurologic (Equilibrium tests under item 22).
42. Psychiatric (Specify any personality deviation).
43. Pelvic (Females only) (Check how done) Vaginal Rectal.
44. Dental (Place appropriate symbols, shown in example, above or below number of upper and lower teeth.).

Right. 1/32, 2/31, 3/30, 4/29, 5/28, 6/27, 7/26, 8/25. Left: 9/24, 10/23, 11/22, 12/21, 13/20, 14/19, 15/18, 16/17.

Remarks and Additional Dental Defects and Diseases.

LABORATORY FINDINGS

45. Urinalysis: A. Specific Gravity; B. Albumin; C. Sugar; D. Microscopic.
46. Chest X-Ray (Place, date, film number and result).
47. Serology (Specify test used and result).
48. EKG.
49. Blood Type and RH Factor.
50. Other Tests.

Notes: (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.).

MEASUREMENTS AND OTHER FINDINGS

51. Height.
52. Weight.
53. Color Hair.
54. Color Eyes.
55. Build: ☐ SLENDER ☐ MEDIUM ☐ HEAVY ☐ OBESE.
56. Temperature.
57. Blood Pressure (Arm at heart level): A. Sitting: Sys., Dias.; B. Recumbent: Sys., Dias.; C. Standing (3 min.) Sys., Dias.
58. Pulse (Arm at heart level): A. Siting; B. After Exercise; C. 2 min. after; D. Recumbent; E. After standing 3 min.
59. Distant Vision: Right 20/—Corr. to 20/ ; Left 20/—Corr. to 20/.
60. Refraction: By S. CX; By S. CX.
61. Near Vision: Corr. to, by; Corr. to, by.
62. Heterophoria (Specify distance): ES*, EX*, R.H., L.H., Prism Div., Prism Conv. CT, PC, PD.
63. Accommodation: Right, Left.
64. Color Vision (Test used and result).
65. Depth Perception (Test used and score): Uncorrected, Corrected.
66. Field of Vision.
67. Night Vision (Test used and score).
68. Red Lens Test.
69. Intraocular Tension.
70. Hearing: Right WV, /15 SV, /15; Left WV, /15 SV, /15.
71. Audiometer: Right, Left, 250/256, 500/512, 1000/1024, 2000/2048, 3000/3096, 4000/4096, 6000/6144, 8000/8192.
72. Psychological and Psychomotor (Tests used and score).
73. Notes (Continued) and Significant or Interval History.(Use additional sheets if necessary).
74. Summary of Defects and Diagnoses (List diagnoses with item numbers).
75. Recommendations—Further Specialist Examinations Indicated (Specify).
76. A. Physical Profile: P, U, L, H, E, S. B. Physical Category: A, B, C, E.
77. Examine (Check) A. ☐ is qualified for; B. ☐ is not qualified for.
78. If not Qualified, List Disqualifying Defects by Item Number.
79. Typed or Printed Name of Physician. Signature.
80. Typed or Printed Name of Physician. Signature.
81. Typed or Printed Name of Dentist or Physician (Indicate which). Signature.
82. Typed or Printed Name of Reviewing Officer or Approving Authority. Signature.

Number of Attached Sheets.

(Standard Form 93, Rev. October 1974, GSA FPMR 101-11.8, approved, Office of Management and Budget, No. 29-R0191)

REPORT OF MEDICAL HISTORY

(This information is for official and medically-confidential use only and will not be released to unauthorized persons)

1. Last name—first name—middle name.
2. Social Security or identification no.
3. Home address (No. street or RFD, city or town, State and ZIP Code).
4. POSITION (title, grade, component).
5. Purpose of examination.
6. Date of examination.
7. Examining facility or examiner, and address (including ZIP Code).
8. Statement of examinee's present health and medications currently used (follow by description of past history, if complaint exists).
9. Have you ever (please check each item)—Yes, no:

Lived with anyone who had tuberculosis.

Coughed up blood.

Bled excessively after injury or tooth extraction.

Attempted suicide.

Been a sleepwalker.

10. Do you (please check each item)—Yes, no:

Wear glasses or contact lenses.

Have vision in both eyes.

Wear a hearing aid.

Stutter or stammer habitually.

Wear a brace or back support.

11. Have you ever had or have you now (please check at left of each item)—Yes, no, don't know:

Scarlet fever, erysipelas.

Rheumatic fever.

Swollen or painful joints.

Frequent or severe headache.
Dizziness or fainting spells.
Eye trouble.
Ear, nose, or throat trouble.
Hearing loss.
Chronic or frequent colds.
Severe tooth or gum trouble.
Sinusitis.
Hay Fever.
Head injury.
Skin diseases.
Thyroid trouble.
Tuberculosis.
Asthma.
Shortness of breath.
Pain or pressure in chest.
Chronic cough.
Palpitation or pounding heart.
Heart trouble.
High or low blood pressure.
Cramps in your legs.
Frequent indigestion.
Stomach, liver, or intestinal trouble.
Gall bladder trouble or gallstones.
Jaundice or hepatitis.
Adverse reaction to serum, drug, or medicine.
Broken bones.
Tumor, growth, cyst, cancer.
Rupture/hernia.
Piles or rectal disease.
Frequent or painful urination.
Bed wetting since age 12.
Kidney stone or blood in urine.
Sugar or albumin in urine.
VD—Syphillis, gonorrhea, etc.
Recent gain or loss of weight.
Arthritis, Rheumatism, or Bursitis.
Bone, joint or other deformity.
Lameness.
Loss of finger or toe.
Painful or "trick" shoulder or elbow.
Recurrent back pain.
"Trick" or locked knee.
Foot trouble.
Neuritis.
Paralysis (include infantile)
Epilepsy or fits.
Car, train, sea or air sickness.
Frequent trouble sleeping.
Depression or excessive worry.
Loss of memory or amnesia
Nervous trouble of any sort.
Periods of unconsciousness.

12. Females only: Have you ever—
Been treated for a female disorder.
Had a change in menstrual pattern.

13. What is your usual occupation?

Are you (check one):
Right handed.
Left handed.

Check each item yes or no. Every item checked yes must be fully explained.

15. Have you been refused employment or been unable to hold a job or stay in school because of:

A. Sensitivity to chemicals, dust, sunlight, etc.

B. Inability to perform certain motions.

C. inability to assume certain positions.

D. Other medical reasons (if yes, give reasons.)

16. Have you ever been treated for a mental condition? (If yes, specify when, where, and give details).

17. Have you ever been denied life insurance? (If yes, state reason and give details.).

18. Have you had, or have you been advised to have, any operations? (If yes, describe and give age at which occurred.)

19. Have you ever been a patient in any type of hospitals? (If yes, specify when, where, why, and name of doctor and complete address of hospital.)

20. Have you ever had any illness or injury other than those already noted? (If yes, specify when, where, and give details.)

21. Have you consulted or been treated by clinics, physicians, healers, or other practitioners within the past 5 years for other than minor illinesses? (If yes, give complete address of doctor, hospital, clinic, and details.)

22. Have you ever been rejected for military service because of physical, mental, or other reasons? (If yes, give date and reason for rejection.)

23. Have you ever been discharged from military service because of physical, mental, or other reasons? (If yes, give date, reason, and type of discharge: whether honorable, other than honorable, for unfitness or unsuitability.)

24. Have you ever received, is there pending, or have you applied for pension or compensation for existing disability? (If yes, specify what kind, granted by whom, and what amount, when, why.)

I certify that I have reviewed the foregoing Information supplied by me and that it is true and complete to the best of my knowledge. I authorize any of the doctors, hospitals, or clinics mentioned above to furnish the Government a complete transcript of my medical record for purposes of processing my application for this employment or service.

Typed or printed name of examinee.
Signature.

Note: Hand to the doctor or nurse, or if mailed mark envelope "to be opened by medical officer only."

25. Physician's summary and elaboration of all pertinent data (Physician shall comment on all positive answers in items 9 through 24. Physician may develop by interview any additional medical history he deems important, and record any significant findings here.)

Typed or printed name of physician or examiner.
Date.
Signature.
Number of attached sheets.

HOUSE OF REPRESENTATIVES,
Washington, DC, June 9, 1988.

Hon. LES ASPIN,
Chairman, House Armed Services Committee, Washington, DC.

DEAR MR. CHAIRMAN: I know you share with me great sorrow over the death of Airman Recruit Lee William Merecki, who died so tragically during an air-sea rescue exercise in Pensacola.

As you may or may not be aware, I have been deeply invovled in activities geared toward raising the public's sensitivity to the plight of those individuals who suffer from phobias and panic disorders. In 1985, at my request, Chairman Waxman convened a hearing of the Subcommittee on Health and the Environment, on which I served, to examine the serious problem of phobias, which afflict one out of eight people, and is the Nation's number one mental health disorder.

It is quite obvious in view of these statistics that there have to be numbers of phobias in the military. I am seriously concerned that this may be a health area that is not being given the emphasis that these disorders deserve. During our hearing in 1985 it was shocking to learn of the misdiagnoses that were made, the lack of adequate treatment availability and just a basic understanding of the serious nature of the problem.

Without access to state of the art treatment many phobics are not able to function properly. As serious as the problem is for the public at large, it is even more serious when one considers the implications for our military readiness. Our soldiers must be ready for combat conditions and this means not only healthy bodies but healthy functioning minds.

I would most respectfully ask that you convene a hearing on phobias in the military. We need to explore the availability of state of the art treatment, the expertise of military health care deliverers in dealing with phobias and panic disorders, and what is being done to educate the military personnel on this very serious problem.

Since becoming involved in the phobia problem I have heard horror stories, and some of those stories have come to me from Members of this very body who suffer from phobias. On the other hand, I have heard of those who were able to overcome debilitating phobias after meaningful treatment.

The members of our military are the best and I want to make sure that this problem is dealt with the seriousness it deserves. I believe a hearing by your committee would do much to raise the sensitivity of the military and the public to this problem, and would give us an opportunity to see if the military is doing an adequate job in assisting those phobics who may be in the military.

If one looks at the press reports on Airman Merecki, it is clear that he had been suffering from a phobia since age 5. Allegedly one military flight surgeon said he was unfit for the rescue exercise because of his phobia and fear of being pulled under the water, yet this decision was overruled by a military psychologist. One has to ask whether the psychologist knew what phobias were and how to deal with them or whether there was an attitude of "get back to your exercise and be a man." Believe me, the stories told to me by phobics who suffer from panic attacks, indicate that this tactic does not work.

Keep in mind that someone in a combat situation who has a phobia may not be functional if a panic attack is triggered. However, the chances are good that if that individual has received treatment there will not be a problem. Need I say more.

I hope that you will take this request in the manner in which it is offered. I would be pleased to provide you with any information you might need as background on accepted treatments, experts in the field, etc. I believe this is an issue that is much too serious to push aside and I hope you will address this as soon as possible. Please feel free to contact me or Ms. Hanbury in my office.

Sincerely yours,

MICHAEL BILIRAKIS,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC, June 9, 1988.

Hon. FRANK CARLUCCI,
Secretary of Defense, Department of Defense, The Pentagon, Washington, DC.

DEAR MR. SECRETARY: Since becoming a Member of Congress I have been deeply involved in the plight of phobics in this country. It is for this reason, as well as others, that I am deeply concerned about the death of Airman Recruit Lee William Merecki, who, according to news reports, was forced to take part in a swimming drill in spite of a debilitating phobia which allegedly led to his death.

As you may or may not be aware, phobias are the number one mental disorder in this nation, and one out of every eight people suffer from some sort of phobia. Obviously, there are degrees of discomfort that come with phobias, with mild discomfort on one end and total debilitation on the other.

The health of our armed forces is of paramount importance and vital to our military readiness. With this I'm sure you will have no argument. Each recruit must be in a position to face a combat situation with a healthy body and a healthy mind.

Needless to say, I have a number of questions which I would appreciate your addressing.

1. When an individual is recruited and goes through the health evaluation procedures, are there any questions posed which are geared toward assessing potential mental health problems?

2. Are there any specific questions posed relating to phobias, panic or anxiety attacks?

3. Please walk me through step by step the entire health evaluation procedure from the time someone expresses an interest in joining the armed forces.

4. Is a mental health evaluation done prior to induction or after?

5. If someone who is already inducted indicates they suffer from phobias and panic attacks how is this problem handled?

6. Is state of the art treatment for phobias readily available to military personnel who are suffering from phobias, panic attacks or anxiety.

7. If there are phobia treatment programs available, are there waiting lists for the programs? How many of these programs are available, where are they located and what is the average patient population?

8. If there are not any phobia treatment programs available, what is the policy of the Department of Defense on paying for nonmilitary treatment.

9. Please provide me with any regulations or other information issued by the Department of Defense relative to the treatment of phobias, panic disorders or anxiety.

10. What educational resources are available to military psychologists and psychiatrists to enable them to keep up with the state of the art?

11. What requirements are in place requiring mental health counselors, doctors, etc. to attend educational seminars in order to keep up with latest developments in mental health treatment advances?

12. Do you have any medical personnel that specialize in the treatment of phobias, panic disorders and anxiety? If so are you able to provide me with the number of personnel who work in this area and where they are located?

13. Do you have statistics on the diagnoses of military personnel who seek mental health counseling? If so, please provide this information to me.

14. Has the Department of Defense, in an effort to educate, ever provided general information to military personnel on phobias?

15. Please provide me with any regulations or guidelines you might have on the treatment of those suffering from phobias, panic disorders, or anxiety?

Your assistance in providing this information will be helpful. Please do not hesitate to contact me or Ms. Hanbury in my Washington office. Thank you for your cooperation.

Sincerely yours,

MICHAEL BILIRAKIS,
Member of Congress.

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Mr. CHAPPELL. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. HEFNER], one of our members of the Subcommittee on Defense.

Mr. HEFNER. Mr. Chairman, I rise in strong support of this legislation. Since I have been on this committee I have not seen such cooperation as we have had from all the members and staff. They have done an excellent job. I commend the gentleman from Pennsylvania [Mr. MCDADE] who has done a tremendous job, and commend our chairman, the gentleman from Florida [Mr. CHAPPELL], who has done a tremendous job on this bill. This is not a wish list. This is a list that has been put together, a program put together based on priorities and cooperation from all the military services. I recommend this legislation to all the Members of the House.

Mr. Chairman, since I have been on the Committee on Appropriations we have probably had on this particular bill no more extensive hearings and cooperation than we have had on this one. Taking nothing away from previous chairmen, the gentleman from Florida [Mr. CHAPPELL], the chairman of the Subcommittee on Defense has done an excellent job and I highly recommend this legislation to all the Members of the House. It is based on priorities and for the defense of this country, and I highly recommend it. I join in strong support for this legislation.

Mr. MCDADE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. CHAPPELL. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Chairman, I rise in strong support of this legislation and I certainly want to thank the gentleman from Florida [Mr. CHAPPELL], the chairman of the Subcommittee on Defense, and also thank the gentleman from Pennsylvania [Mr. MCDADE], the ranking minority member, and thank all the members of the subcommittee as well as the full committee for reporting out in my opinion a very good bill.

I would like to touch on two areas in this legislation.

The committee has been very fair to the National Guard and Reserve. Funding for personnel and equipment for the Reserve in my opinion is very adequate in this legislation. My colleagues have heard me say this before but the National Guard and Reserve are a good buy for the taxpayers and they can do the job if they are given the mission and the equipment and the proper incentives for their personnel. I believe that the Congress wants to improve the National Guard and Reserve and certainly under this legislation the Reserves are being treated very fairly.

The second area that I would like to address is funding for sharing our medical research between the Department of Defense and the Veterans' Administration. The Department of Defense and the Veterans' Admininstration are getting together on medical research which will not only result in benefits to the military service personnel but it helps the veteran as well. I point out that they are doing peacemaker work for the military, and it is being done by the Veterans' Administration. They are working together on AIDS, and we have to move forward on that matter. Between the Department of Defense and the Veterans' Administration we hope we can come up with a cure for AIDS. We are now working with the Department of Defense through the Veterans' Administration research on gunshot wounds and different types of wounds that develop in the defense of our country.

Certainly this is a good bill.

Mr. Chairman, I want to thank the gentleman from Florida [Mr. CHAPPELL] for having yielded me this time.

Mr. CHAPPELL. Mr. Chairman, I yield 1 minute to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Chairman, I take this time to commend the Subcommittee on Defense, which is headed by the able gentleman from Florida [Mr, CHAPPELL], and the gentleman from Pennsylvania [Mr. MCDADE], the ranking member, for the outstanding work they have done on this bill. There are two areas I wish to specifically mention.

The first area I wish to mention is that of operation, maintenance, and readiness, where I think they have paid particular attention to this area allowing our soldiers and sailors and airmen and marines to be ready, to have appropriate and sufficient training and the wherewithal to do that, and that is found within this bill.

The second area I wish to point out is the area similar to what the gentleman from Mississippi [Mr. MONTGOMERY] mentioned a moment ago, the National Guard and Reserve. They have been looked after and in this bill they are adequately funded, particularly in the area of equipment as well as personnel.

I commend my colleagues and I wholeheartedly support this bill.

Mr. CHAPPELL. Mr. Chairman, I yield 3 minutes to the gentlewoman from California [Mrs. BOXER].

Mrs. BOXER. Mr. Chairman, I thank the gentleman from Florida [Mr. CHAPPELL] for yielding me this time.

Mr. Chairman, I include for the RECORD a letter from the gentleman from Florida [Mr. CHAPPELL] to the Secretary of the Navy concerning the

Hunters Point Naval Shipyard as relates to the numerous artists and small businesses that are tenants of the Navy:

LETTER TO THE SECRETARY OF THE NAVY FROM HON. BILL CHAPPELL

The Committee has become aware that numerous artists and small businesses are tenants of the Navy at the Hunters Point Naval Shipyard. While we appreciate that these tenants may conflict with the Navy's operation of this facility and that the Navy desires that they relocate off of Federal property, the Committee is concerned that reasonable opportunity be provided for these businesses to preserve their operations.

It is requested that the Navy provide a report on this situation to the Committee and advise the Committee of its plan for dealing with these businesses and artists. Until this report is submitted and approved by the Committee, it is requested that the Navy take no action to remove—except for any actions taken by reason of the failure of the artist or small business to comply with the conditions of the license—these artists or businesses. The Committee has been advised that except for the tenants of one building, which involves a battery recycling business and a truck leasing business, which are planning to relocate by the end of June so that the Navy may proceed with field investigation of a hazardous waste site which encumbers the building, this should not present any immediate problems to the Navy.

The report to be submitted should include:

A listing of what missions are to be expanded or added or eliminated at Hunters Point; a listing of what programs will need to be approved by Congress and the fiscal year such a request will be made; and a listing of which sections of Hunters Point will need to be vacated by these artists and small businesses and when.

A plan of action on how and when these artists and small businesses will be notified. The plan should provide adequate notice of at least six months and provide a procedure for re-evaluating any license to fair value for any artists or small business.

Please advise me if there are any other issues requiring our immediate consideration prior to the submission of your report and recommendations.

Mr. Chairman, let me say that the gentleman from Florida [Mr. CHAPPELL] has been very helpful to the gentlewoman from California [Ms. PELOSI] and to me. We have a serious problem in our area at Hunters Point. There is a debate going on over the use of Hunters Point Naval Shipyard, which of course has been idled for quite some time. While that debate rages on there are a number of small businesses and artists there who have really created a great number of jobs, about 800 jobs. Their situation has been most precarious. They do not know where they stand from one month to the next.

What the gentleman from Florida [Mr. CHAPPELL] has done at the behest of the gentlewoman from California [Ms. PELOSI] and me is to write a letter to the Secretary of the Navy which sets out some very clear guidance, such as no one will be evicted without at least 6 months notice, and essentially has put the Navy on notice that they have to give these small businesses some respect.

Ms. PELOSI. Mr. Chairman, will the gentlewoman from California yield?

Mrs. BOXER. Mr. Chairman, I yield to my colleague the gentlewoman from California [Ms. PELOSI], who represents this area and has been so helpful to these small businesses. I will add that it has been a pleasure to work with her as a team on this issue.

Ms. PELOSI. Mr. Chairman, I thank the gentlewoman from California [Mrs. BOXER] for yielding, and I commend her for her hard work on this issue. It makes a difference in the lives of our workers at Hunters Point who have been there for a few years and are faced with uncertainty.

I, too, want to commend the gentleman from Florida [Mr. CHAPPELL] for his hard work on this issue and on this legislation, as well as our colleague the gentleman from Pennsylvania [Mr. MCDADE]. Particularly I want to commend the chairman for bringing the various elements together on this issue, finding a solution which will bring reason to a chaotic situation, and we in San Francisco are very grateful to him for his hard work on this issue.

I again compliment my colleague the gentlewoman from California [Mrs. BOXER] for her knowledge, for her ability to get this job done, and to make a real difference in the lives of these businesses at Hunters Point, who are not anti-Navy or anti-Missouri or anything. They are people who want to do their job and have an amount of certainty in their lives.

Mr. CHAPPELL. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I thank my colleagues for those kind words. I understand the concern and I sympathize with the artists and small businesses now tenants on Hunters Point. I have written a letter to the Secretary of the Navy asking for the future use of Hunters Point and how they plan to deal with the artists and small businesses tenants on the land. I believe the situation will work out satisfactorily to those who are keenly interested in this important issue.

Mrs. LLOYD. Mr. Chairman, I rise in support of the bill because it represents the best we can do in terms of funding critical programs under difficult circumstances. I believe the Appropriations Committee has made a good faith attempt to work within the budget summit guidelines while recognizing the policy direction provided by the authorizing committee.

In weapons procurement programs, it is clear to me that the bill recognizes the need to provide enhanced conventional capability for NATO as we move away from today's almost exclusive dependence on the nuclear deterrent. I would remind my colleagues, however, that conventional capability will take a decade of growth as we gradually "backoff" strategic deterrence.

Air Force procurement is funded healthily in the critical areas of the B-2 bomber and advanced tactical aircraft, the F-15, F-16, C-17, and MX missiles are all important items which have been well funded considering the budget circumstances.

In the case of Navy procurement, I am pleased to see that the Trident missiles and submarines have been funded at healthy levels as well as the F-18 and F-14 aircraft. I am supportive of the SSN-21 attack submarine with the first ship funded in this bill but I am more enthusiastic about the DARPA-managed program in advanced submarine R&D. I am very pleased to see that the Appropriations Committee has fully funded this advanced submarine program for fiscal year 1989; this sends the proper signal to the Soviets that we recognize that they are rapidly narrowing the undersea technology gap. I am proud to see this fresh new start go forward and, from all reports, DARPA has been inundated with a variety of innovative proposals. While recognizing that Navy laboratories such as that premier center of excellence, the Naval Research Laboratory, should play some appropriate role in the program, I hope that DARPA and the Navy will insure that the very best industrial technology proposals are funded so that this program can go forward in an aggressive manner. I also understand that the defense authorization conference report language and funding will also be very supportive of advanced submarine R&D. This is a congressionally initiated program which I believe the DOD has begun to handle in a very positive fashion. I think this is most important, because as I have noted before, the stakes are no less than whether the U.S. submarines will be "the hunters" or "the hunted" in the undersea theater of operations beyond the year 2000.

Mr. FRENZEL. Mr. Chairman, I shall vote against H.R. 4781 even though it has been constructed to conform with last year's economic summit and is only about 2 percent more than past year's appropriation.

Even though the bill is tame by the standards of our Appropriations Committee, it contains far too many instances of legislating in an appropriation bill. There are at least nine such instances affecting shipbuilding, food, textiles, metals, coal and coke, aircraft parts, ammunition, supercomputers, machine tools, anchors, mooring chain, and all Toshiba products.

Each of these offending provisions restricts defense procurement of non-U.S. products, adds to the cost of procurement, and violates at least the spirit of our alliances. Our allies, to whom we sell huge volumes of defense materials, deserve to sell us a modest volume of competitive products.

Mr. BOULTER. Mr. Chairman, I wish to state my opposition to the fiscal year 1989 defense appropriations. I oppose the bill because I do not believe it adequately supports our national security interests. More specifically, I believe it is fatally flawed in that it compromises our nuclear deterrent by financially undermining two of our most vital strategic programs, the Stra-

tegic Defense Initiative and the Peacekeeper missile rail-garrison.

I cannot support a bill that cuts the President's reasonable SDI funding request by $1.3 billion, a 29-percent reduction. By drastically reducing the funding levels for the Strategic Defense Initiative we delay or forgo not only a viable strategic defense, but also the collateral technological developments that have, and will continue to emerge from such research.

At the same time the Peacekeeper missile rail-garrison funding has been cut by $693 million—a figure that is absolutely unacceptable in light of the reality that currently persists between the United States and the Soviet Union. To gut the programmed deployment for these missiles is to jeopardize our national security needlessly.

This strategic concern placed in the broader context of the 1.4-percent overall real defense funding production is my primary justification for opposing the bill. That does not mean I object to the bill's every provision. I support the full 4-percent civilian pay raise, although I believe our 2,138,300 active-duty men and women in uniform deserve the 4.3-percent pay raise the President requested. I applaud the committee's stated goals for military readiness, for no one can deny the asset of well-motivated personnel. However, I believe the committee could have done more toward this goal by funding the military pay increase at the President's level.

There is a final objection to this measure, Mr. Chairman, which I wish to raise. While I agree that the interdiction of drugs is one of the necessary means to rid our society of the scourge of drugs, I believe that siphoning $410 million from the Strategic Defense Initiative to help fund drug interdiction programs is a mistake. While drugs are an obvious threat to our society, so are ballistic missiles. The idea that we must choose between the two is a mistaken one that may end up failing to defend adequately against either threat.

For these reasons I oppose the bill and I urge my colleagues to do the same.

Mr. BONKER. Mr. Chairman, I rise today to express my support for the 1989 Defense appropriation and Defense amendment bills. These bills include important arms control provisions that affirm the Congress' support for the arms control process begun by the INF Treaty.

Perhaps the most important achievement of the 1988 Defense bills lies in the restraints they impose on the President's SDI or star wars program. By cutting $600 million from the administration's request for star wars, the Defense bills not only cut the budget deficit, they also force the star warriors to rethink a program whose costs and benefits are still unknown. After pouring billions of dollars of research money into star wars, we are still in doubt as to whether a space-based defense is possible, affordable, or even desirable. For this reason I voted in favor of a measure that would have required a review of star wars before appropriating more money.

Although the Defense bills do not include such a measure, they do limit the amount of money the administration can spend on the quick-fix version of star wars, phase I. The phase I project is intended to deploy part of star wars before the turn of the century. Since Soviet technology advances will probably make it obsolete the day it is deployed, the phase I program makes no sense. It is meant as a showpiece that will convince the taxpayers to fund the real star wars program. In the age of record budget deficits, we can hardly afford multibillion dollar showpieces.

The strict limits on MX missile funding in this year's Defense bills also serve the arms control process. As one of the most powerful and dangerous weapons systems ever developed, the MX undermines the sincerity of our efforts at the START talks. How can we convince the Soviets that we want to eliminate long range missiles if we are simultaneously building our most lethal, most expensive missile ever? Even without an arms control agreement, restraints on MX should remain a high priority. The missile's speed, accuracy and many warheads make it an ideal weapon for first strikes. By building what looks like a first-strike weapon, we only frighten the Soviets, and a frightened nuclear adversary is the last thing we want.

The Defense appropriation bill includes bans on testing weapons of more than 1 kiloton and on weapons that could destroy satellites. Both of these measures will help contain the arms race by slowing development of new weapons systems.

Unfortunately, the Defense bills do not cut overall defense spending much below the $300 billion level requested by the administration. While we certainly need to fund a Defense Department strong enough to fulfill our obligations abroad and protect our national security, we do not need to continue offering the defense industry a blank check for all the weapons it would like to build. The Pentagon procurement scandals now emerging demonstrate the futility of throwing money at our problems. This year's Defense bills should facilitate arms control. Lets hope next year's encourage budget control.

Mr. RANGEL. Mr. Chairman, as the Chairman of the House Select Committee on Narcotics Abuse and Control, I rise in support of the provisions in H.R. 4781, the Department of Defense appropriations bill, 1989, which relate to drug interdiction.

H.R. 4781 appropriates $410 million for the Navy to support Coast Guard activities for coastal defense and drug interdiction. Of this total, the bill provides $350 million for procurement of equipment including three E2-C aircraft, six helicopters, 10 patrol boats, secure command and control equipment, and air surveillance equipment. The remaining $60 million is to be transferred by the Navy to the Coast Guard for maintenance of this equipment. This money will enable the Coast Guard to carry on its critical drug interdiction and coastal defense activities.

Mr. Chairman, in fiscal year 1988, the Coast Guard was forced to absorb a $103 million cut in its operating budget, and drug patrols were cut back 55 percent. Such patrols are responsible for 90 percent of the Coast Guard's drug seizures. The Coast Guard Commandant, Adm. Paul Yost, testified recently that he has personnel sitting in port, because there was not sufficient money to send them out to sea. This is a clear waste of valuable, trained manpower, and can only have a negative impact on the morale of the individuals involved and serious detrimental consequences for the missions, including drug interdiction, they would otherwise perform.

If winning the war against drugs is the number one domestic concern of American voters, as public opinion polls say it is, then Federal spending patterns should reflect this concern. I support the $410 million provided for the Coast Guard in the 1989 Department of Defense Appropriations Bill. Although this amount is not adequate to significantly curtail the continuous onslaught of drugs which is directed against America, it should at least enable the Coast Guard to restore the drug enforcement activities curtailed by the 1988 cuts. The House is currently working on omnibus drug legislation which will be brought to the floor later this summer. I am hopeful that at that time we will be able to provide significant enhancements to the Coast Guard's drug enforcement capabilities.

I am concerned about the continuing pattern of funding a portion of the Coast Guard's budget out of the DOD appropriations bill. The Transportation Appropriations bill the House is scheduled to take up later this week assumes the appropriation of the funds included in the DOD bill. If for some reason the Coast Guard funding in the DOD bill does not become law, the amounts included for the Coast Guard in the DOT bill are totally insufficient to provide for Coast Guard operations.

In my mind, this jerry-built approach to Coast Guard funding is no way to fight a war on drugs. We need to assign a higher budgetary priority to our antidrug efforts and find a way to ensure that the Coast Guard will receive directly the funds it needs to do the job of drug interdiction Congress has assigned to it.

Mr. BURTON of Indiana. Mr. Chairman, once again, we face the incomprehensible myopia of those who want to cut the future off at the knees.

If Jimmy Carter had proposed SDI, liberals would be four-square behind it. SDI is a revolutionary concept. It is Ronald Reagan's legacy.

SDI: "A shield, not a sword," Edward Teller. Arms control and strategic defense are not competing objectives. They are rather, two sides of the same coin.

It is a humane, sane alternative to insane, profane, inane mad.

Not moving forward with SDI would be like asking the Orioles to take the field without baseball gloves. They'd never win. It would be like asking the Capitals to play hockey without a goalie.

We can do it. The technology is there in developing. Making great progress. The Soviets obviously believe it can work. First, they are developing it themselves; and second, they are trying desperately to prevent us from developing it.

Offshoot technology from SDI is already paying dividends and will continue to do so—specifically in medicine and technology.

A Heritage Foundation study concluded that $5 to $20 trillion is expected to flow into the economy from the private commercial marketing of SDI-related products.

The House Armed Services Committee reduction is significant and deadly. The adminis-

tration asked for $4.5 billion, which is still less than the $6.3 billion originally planned to request. HASC reduced the request to $3.7 billion.

The reduction will cause major damage to proof of feasibility experiments. The opponents of strategic defense are well aware of that. Further cuts would severely impact the future measured progress of SDI.

The ABM Treaty is a unilateral treaty. The Soviets continue to violate it just as they violate other treaties.

The reports leaked recently on SDI, supposedly showing it won't work—the timing is too much of a suspicious coincidence. Mr. Carlucci said it best: "That's like saying that helicopters won't work 10 years before we had helicopters."

SDI is a challenge for a safer future, a safer America, a safer world. Let's do what Americans have always done in the face of danger. Let's reach back for Yankee ingenuity. Let's meet that challenge.

Mr. CHAPPELL. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. GRAY of Illinois). All time has expired.

The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1989, for military functions administered by the Department of Defense, and for other purposes, namely:

TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; $24,467,893,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; $18,909,103,000: *Provided,* That in addition to the funds appropriated in this paragraph, $34,000,000 is appropriated for Aviation Continuation Pay which shall not be obligated or expended until the Secretary of Defense submits a report to the Committees on Appropriations of the House of Representatives and the Senate setting forth a Department of Defense plan to implement a service integrated pilot retention program.

MILITARY PERSONNEL, MARINE CORPS

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; $5,704,953,000.

MILITARY PERSONNEL, AIR FORCE

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97-377, as amended (42 U.S.C. 402 note), to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and to the Department of Defense Military Retirement Fund; $20,038,052,000: *Provided,* That in addition to the funds appropriated in this paragraph, $54,000,000 is appropriated for Aviation Continuation Pay which shall not be obligated or expended until the Secretary of Defense submits a report to the Committees on Appropriations of the House of Representatives and the Senate setting forth a Department of Defense plan to implement a service integrated pilot retention program.

RESERVE PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 265, 3021, and 3038 of title 10, United States Code, or while serving on active duty under section 672(d) of title 10, United States Code, in connection with performing duty specified in section 678(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; and for payments to the Department of Defense Military Retirement Fund; $2,255,870,000.

RESERVE PERSONNEL, NAVY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 265 of title 10, United States Code, or while serving on active duty under section 672(d) of title 10, United States Code, in connection with performing duty specified in section 678(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; and for payments to the Department of Defense Military Retirement Fund; $1,617,185,000.

RESERVE PERSONNEL, MARINE CORPS

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 265 of title 10, United States Code, or while serving on active duty under section 672(d) of title 10, United States Code, in connection with performing duty specified in section 678(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; and for payments to the Department of Defense Military Retirement Fund; $315,149,000.

RESERVE PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 265, 8021, and 8038 of title 10, United States Code, or while serving on active duty under section 672(d) of title 10, United States Code, in connection with performing duty specified in section 678(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; and for payments to the Department of Defense Military Retirement Fund; $656,771,000.

NATIONAL GUARD PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 265, 3021, or 3496 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 672(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 678(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; and for payments to the Department of Defense Military Retirement Fund; $3,319,049,000.

NATIONAL GUARD PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 265, 8021, or 8496 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 672(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 678(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty, or other duty, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; and for payments to the Department of Defense Military Retirement Fund; $1,027,497,000.

Mr. CHAPPELL (during the reading). Mr. Chairman, I ask unanimous consent that title I be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there any points of order against title I?

If not, the Clerk will read.

The Clerk read as follows:

TITLE II

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $18,487,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes; $22,094,277,000: *Provided,* That of the funds appropriated in this paragraph, $18,998,000 shall not be obligated or expended until authorized by law: *Provided further,* That of the funds appropriated in this paragraph, $900,000 shall be available only to support the 1989 World Ski Championships.

OPERATION AND MAINTENANCE, NAVY

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed $4,014,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes; $24,992,800,000, of which $60,000,000 shall be transferred to the Coast Guard: *Provided,* That from the amounts of this appropriation for the alteration, overhaul and repair of naval vessels and aircraft, funds shall be available to acquire the alteration, overhaul and repair by competition between public and private shipyards and air rework facilities. The Navy shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private shipyards and air rework facilities. Competitions shall not be subject to section 502 of the Department of Defense Authorization Act, 1981, as amended, section 307 of the Department of Defense Authorization Act, 1985, or Office of Management and Budget Circular A-76: *Provided further,* That funds appropriated or made available in this Act shall be obligated and expended to restore and maintain the facilities, activities and personnel levels, including specifically the medical facilities, activities and personnel levels, at the Memphis Naval Complex, Millington, Tennessee, to the fiscal year 1984 levels.

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law; $1,842,000,000.

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed $7,690,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes; $21,890,400,000: *Provided,* That in fiscal year 1989, not less than $15,000,000 shall be available only for the cleanup of uncontrolled hazardous waste contamination at Hamilton Air Force Base, in Novato, in the State of California, sufficient to permit the unrestricted use of the property, subject to the resolution of procedural and technical issues to meet such standard which shall be established by the relevant State and Federal regulatory agencies in consultation with the Department of Defense, in accordance with the agreement between the Federal Government and the purchaser.

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law; $7,721,100,000, of which not to exceed $11,691,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes: *Provided,* That $900,000 is available to the Office of Economic Adjustment for making community planning assistance grants pursuant to section 2391 of title 10, United States Code, and joint community/military planning assistance grants for mitigation of operational impacts from encroachment.

OPERATION AND MAINTENANCE, ARMY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; $794,900,000.

OPERATION AND MAINTENANCE, NAVY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; $977,548,000.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; $77,500,000.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications; $1,033,900,000.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft); $1,797,000,000.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For operation and maintenance of the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, repair, and other necessary expenses of facilities for the training and administration of the Air National Guard, including repair of facilities, maintenance, operation, and modification of aircraft; transportation of things; hire of passenger motor vehicles; supplies, materials, and equipment, as authorized by law for the Air National Guard; and expenses incident to the maintenance and use of supplies, materials, and equipment, including such as may be furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; $1,971,000,000.

NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE, ARMY

For the necessary expenses and personnel services (other than pay and non-travel related allowances of members of the Armed Forces of the United States, except for members of the Reserve components thereof called or ordered to active duty to provide support for the national matches) in accordance with law, for construction, equipment, and maintenance of rifle ranges; the instruction of citizens in marksmanship; the promotion of rifle practice; the conduct of the national matches; the issuance of ammunition under the authority of title 10, United States Code, sections 4308 and 4311; the travel of rifle teams, military personnel, and individuals attending regional, national, and international competitions; and the payment to competitors at national matches under section 4312 of title 10, United States Code, of subsistence and travel allowances in excess of the amounts provided under section 4313 of title 10, United States Code; not to exceed $4,300,000, of which not to exceed $7,500 shall be available for incidental expenses of the National Board.

COURT OF MILITARY APPEALS, DEFENSE

For salaries and expenses necessary for the United States Court of Military Appeals; $3,500,000, and not to exceed $1,500 can be used for official representation purposes.

ENVIRONMENTAL RESTORATION, DEFENSE

(INCLUDING TRANSFER OF FUNDS)

For the Department of Defense; $500,000,000, to remain available until transferred, of which not to exceed $1,750,000

shall be made available for removal of the asbestos contamination at the abandoned Air Force site on Santa Rosa Island of the Channel Islands National Park in California: *Provided*, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, research and development associated with hazardous wastes and removal of unsafe buildings and debris of the Department of Defense, or for similar purposes (including programs and operations at sites formerly used by the Department of Defense), transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense as the Secretary may designate, to be merged with and to be available for the same purposes and for the same time period as the appropriations of funds to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred pursuant to this provision are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

GOODWILL GAMES

For logistical support and personnel services including initial planning for security needs (other than pay and non-travel related allowances of members of the Armed Forces of the United States, except for members of the Reserve components thereof called or ordered to active duty to provide support for the Goodwill Games) provided by any component of the Department of Defense to the Goodwill Games; $5,000,000.

HUMANITARIAN ASSISTANCE

For transportation for humanitarian relief for refugees of Afghanistan, acquisition and shipment of transportation assets to assist in the distribution of such relief, and for transportation and distribution of humanitarian and excess nonlethal supplies for worldwide humanitarian relief, as authorized by law; $13,000,000, to remain available for obligation until September 30, 1990: *Provided*, That the Department of Defense shall notify the Committees on Appropriations and Armed Services of the Senate and House of Representatives 21 days prior to the shipment of humanitarian relief which is intended to be transported and distributed to countries not previously authorized by Congress.

Mr. CHAPPELL (during the reading). Mr. Chairman, I ask unanimous consent that title II be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there any points of order against title II?

POINT OF ORDER

Mr. McCURDY. Mr. Chairman, I have a point of order.

The CHAIRMAN pro tempore. The gentleman will state his point of order.

Mr. McCURDY. Mr. Chairman, I want to raise a point of order against the language in the bill beginning on page 14, line 24 starting with the word "of" and ending on page 15 line 3 after the word "California" on the grounds that this provision is an unauthorized appropriation and violates clause 2 of rule XXI of the House rules.

The CHAIRMAN pro tempore. Does the gentleman from Florida [Mr. CHAPPELL] desire to be heard on the point of order?

Mr. CHAPPELL. Mr. Chairman, I do not, but I would yield to the gentleman from Ohio [Mr. REGULA].

The CHAIRMAN pro tempore. Does the gentleman from Ohio wish to be heard on the point of order?

Mr. REGULA. Mr. Chairman, I do.

Mr. Chairman, I believe that this is a valid provision in the bill. First of all, it applies to funds in this act.

Second, it does not impose any additional duties.

Third, it does not change existing law.

Fourth, it is a negative restriction on the use of funds in this bill and outlines ways in which they can be used, and it sets a ceiling on the funds in the bill and it is not an appropriation from any specific fund.

Last, the Department of Defense does not have to obligate any funds for this purpose.

Beyond that I want to discuss briefly the merits of the issue. The Channel Islands are now a national park. There are five islands off the coast of California. They were acquired by the U.S. Government for a national park and in the years to come will be used extensively because the Channel Islands will serve the many millions of people that live in the greater Los Angeles area.

About 25 years ago the Air Force walked away from a radar station located on Santa Rosa, the largest of the Channel Islands. The radar station had personnel I would guess numbering about 300 with appropriate barracks and other facilities. In addition, there was a dock there for the purpose of loading and unloading supplies or whatever was going in and coming out of that facility. At the time the Air Force left the Channel Islands and left the radar station they did nothing about disposing of the facilities. Because historically it has been a rather remote area, there has been a lot of vandalism there. As a result the barracks are full of broken windows, almost every window is broken out. The pier is nothing but a group of jagged steel points sticking up out of the water. The dock itself has been deteriorated and there is nothing but I-beams in the water, a tremendous hazard to people. There are other adjacent facilities and unfortunately, and worst of all, there is asbestos in the facility. As a result, we have a great hazard for public use in this area because it is a national park. What we suggested and what the Subcommittee on Defense did in this bill was to allow the Department of Defense to use up to $1.7 million to remove the asbestos because this requires under our own statutory requirements special handling. We are not equipped in the National Park Service nor equipped in other areas to deal with this. Therefore, the Subcommittee on Defense, recognized that this facility was built and abandoned by the Air Force, that the Channel Islands now are collectively a national park and that there will be intense use by the public so that this facility presents a great hazard to public use.

□ 1440

The subcommittee, therefore, allowed money to be used if the Department of Defense saw fit to do so. I would point out that the Park Service has worked out with some of the military services to do the balance of the demolition as a demonstration project, the Seabees, or possibly one of the other groups, but they cannot deal with the asbestos.

Therefore, the subcommittee, and I think very properly so, given the national concern here for the impact on the potential, not potential, but actual use of this facility as a national park, recognized that there should be funding available to deal with the asbestos problem. Beyond that, the superintendent of the park and the Park Service can arrange to have one of the military services do an exercise there and get rid of the building and the pier and some of the other things that are a great hazard. But, first of all, we have got to deal with the asbestos, and if asbestos is the threat that the Congress has said it is through the policy decision to require its removal in public buildings, certainly as minimum, as this bill provides, we should get rid of the asbestos here, where we are going to have enormous public usage of a national park.

For that reason, I think, on the merits, this should be allowed to stand, but in addition to that, as far as the point of order, I think there are many compelling reasons to not sustain the point of order raised by the gentleman from Oklahoma.

The CHAIRMAN pro tempore. Does any other Member desire to speak on the point of order?

The gentleman from California [Mr. LAGOMARSINO] will be heard on the point of order.

Mr. LAGOMARSINO. Mr. Chairman, I desire to speak on the point of order, although most of my remarks will be on the merits of the provision.

The CHAIRMAN pro tempore. The Chair would state that the Chair cannot rule on the merits but on the procedural matters pending.

The Chair would be glad to hear the gentleman from California based on the point of order.

Mr. LAGOMARSINO. Mr. Chairman, I think the point of order should

not be sustained. It should be overruled.

The facts are exactly as the gentleman from Ohio has pointed out. The U.S. Government just last year spent $29 million to acquire Santa Rosa Island. The location that is sought to be cleaned up here is on one of the areas of the island which can be used by the public rather easily and obviously it cannot be used until it is cleaned up.

The Air Force left the mess. The Air Force should clean it up, or at least the Department of Defense should, and I hope the chairman will overrule the point of order.

The CHAIRMAN pro tempore (Mr. GRAY of Illinois).

In the opinion of the Chair the provisions beginning after the comma on page 14, line 24, up the provisions on page 15, line 3, which are unprotected by any waiver, constitute not only a limitation but also an unauthorized appropriation of funds up to $1,750,000 for removal of asbestos contamination. Therefore, the Chair sustains the point of order.

Are there any amendments to title II?

If not, the Clerk will read.

The Clerk read as follows:

TITLE III

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $2,828,379,000, to remain available for obligation until September 30, 1991.

MISSILE PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $2,565,500,000, to remain available for obligation until September 30, 1991: *Provided*, That funds may be obligated and expended for procurement and advance procurement of the Forward Area Air Defense System, Line-of-Sight Forward-Heavy system without regard to the restrictions contained in section 111(d) of the National Defense Authorization Act for fiscal years 1988 and 1989 (Public Law 100-180).

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $2,812,521,000, to remain available for obligation until September 30, 1991.

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized in military construction authorization Acts or authorized by section 2854, title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $2,026,163,000, to remain available for obligation until September 30, 1991.

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support, and nontracked combat vehicles; the purchase of not to exceed 185 passenger motor vehicles for replacement only; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; as follows:

Tactical and support vehicles, $849,606,000;

Communications and electronics equipment, $2,909,083,000;

Other support equipment, $897,148,000;

In all: $4,655,837,000, to remain available for obligation until September 30, 1991: *Provided*, That of the funds appropriated in this paragraph, $413,019,000 shall not be obligated or expended until authorized by law.

AIRCRAFT PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; $9,308,735,000, to remain available for obligation until September 30, 1991: *Provided*, That of the funds appropriated in this paragraph, $287,269,000 shall not be obligated or expended until authorized by law.

WEAPONS PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interest therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, as follows:

Poseidon, $188,000;

TRIDENT I, $4,103,000;

TRIDENT II, $1,865,609,000;

Support equipment and facilities, $2,638,000;

Tomahawk, $711,125,000;

AIM/RIM-7 F/M Sparrow, $75,000,000;

AIM-120 AMRAAM, $42,768,000;

AIM-54A/C Phoenix, $325,802,000;

AGM-84A Harpoon, $169,709,000;

AGM-88A HARM, $302,749,000;

SM-2 MR, $598,531,000;

RAM, $52,094,000;

Hellfire, $35,000,000;

Maverick missiles, $82,390,000;

Aerial targets, $109,981,000;

Drones and decoys, $40,744,000;

Other missile support, $21,313,000;

Modification of missiles, $91,383,000;

Support equipment and facilities, $206,947,000;

Ordnance support equipment, $240,907,000;

MK-48 ADCAP torpedo program, $541,800,000;

MK-50 advance lightweight torpedo program, $247,047,000;

Vertical Launched ASROC program, $17,552,000;

Modification of torpedoes, $3,289,000;

Torpedo support equipment program, $48,652,000;

MK-15 close-in weapons system program, $19,449,000;

25mm gun mount, $9,366,000;

Small arms and weapons, $9,811,000;

Modification of guns and gun mounts, $68,976,000;

Guns and gun mounts support equipment program, $838,000;

Spares and repair parts, $87,412,000;

In all: $6,033,173,000, to remain available for obligation until September 30, 1991: *Provided*, That of the funds appropriated in this paragraph, $209,371,000 shall not be obligated or expended until authorized by law.

SHIPBUILDING AND CONVERSION, NAVY

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-

owned equipment layaway; procurement of critical, long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

TRIDENT ballistic missile submarine program, $1,261,100,000;

SSN-688 attack submarine program, $1,417,800,000;

SSN-21 attack submarine program, $1,488,000,000;

Aircraft carrier service life extension program, $243,400,000;

DDG-51 destroyer program, $2,134,400,000;

LHD-1 amphibious assault ship program, $737,500,000;

MHC coastal mine hunter program, $197,200,000;

T-AO fleet oiler program, $689,900,000;

AO conversion program, $84,900,000;

T-AGOS surveillance ship program, $159,600,000;

AOE combat support ship program, $363,900,000;

LCAC landing craft air cushion program, $306,600,000;

For craft, outfitting, and post delivery, $311,800,000;

In all: $9,396,100,000, to remain available for obligation until September 30, 1993: *Provided,* That additional obligations may be incurred after September 30, 1993, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: *Provided further,* That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: *Provided further,* That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards: *Provided further,* That of the funds appropriated in this paragraph, $340,000,000 shall not be obligated or expended until authorized by law.

OTHER PROCUREMENT, NAVY

For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance and ammunition (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of not to exceed 492 passenger motor vehicles of which 434 shall be for replacement only; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, as follows:

Ship support equipment, $645,883,000;

Communications and electronics equipment, $1,434,664,000, including $14,220,000 for the AN/SQR-18 Towed Array Sonar;

Aviation support equipment, $593,311,000;

Ordnance support equipment, $1,179,471,000;

Civil engineering support equipment, $118,475,000;

Supply support equipment, $104,295,000;

Personnel and command support equipment, $399,034,000;

Spares and repair parts, $218,196,000;

In all: $4,693,329,000, to remain available for obligation until September 30, 1991: *Provided,* That funds appropriated for procurement of TSEC/KY-67 (Bancroft) radios shall be available only for procurement of SINCGARS radios.

COASTAL DEFENSE AUGMENTATION

For the augmentation of United States Coast Guard inventories to meet national security requirements; $350,000,000, to remain available until expended: *Provided,* That these funds shall be for the procurement by the Department of Defense of vessels, aircraft, and equipment and for modernization of existing Coast Guard assets, which assets are to be made available to the Coast Guard for operation and maintenance.

PROCUREMENT, MARINE CORPS

For expenses necessary for the procurement, manufacture, and modification of missiles, armament, ammunition, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including purchase of not to exceed 150 passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired and construction prosecuted thereon prior to approval of title; $1,311,322,000, to remain available for obligation until September 30, 1991.

AIRCRAFT PROCUREMENT, AIR FORCE

For construction, procurement, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; $15,915,397,000, to remain available for obligation until September 30, 1991: *Provided,* That none of the funds provided in this Act may be obligated on B-1B bomber contracts which would cause the Air Force's $20,500,000,000 cost estimate for the B-1B bomber baseline program expressed in fiscal year 1981 constant dollars to be exceeded.

MISSILE PROCUREMENT, AIR FORCE

For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; $7,620,587,000, to remain available for obligation until September 30, 1991.

OTHER PROCUREMENT, AIR FORCE

For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; for the purchase of not to exceed 517 passenger motor vehicles of which 403 shall be for replacement only; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, as follows:

Munitions and associated equipment, $646,832,000;

Vehicular equipment, $261,568,000;

Electronics and telecommunications equipment, $1,746,542,000;

Other base maintenance and support equipment, $5,442,105,000;

In all: $8,097,047,000, to remain available for obligation until September 30, 1991: *Provided,* That of the funds appropriated in this paragraph, $32,623,000 shall not be obligated or expended until authorized by law.

NATIONAL GUARD AND RESERVE EQUIPMENT

For procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces, as follows:

Army Reserve, $240,000,000;

Navy Reserve, $129,800,000;

Marine Corps Reserve, $66,800,000;

Air Force Reserve, $241,900,000;

Army National Guard, $333,000,000;

Air National Guard, $163,000,000;

In all: $1,174,500,000, to remain available for obligation until September 30, 1991: *Provided,* That of the funds appropriated in this paragraph, $358,438,000 shall not be obligated or expended until authorized by law.

PROCUREMENT, DEFENSE AGENCIES

For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed 79 passenger motor vehicles of which 72 shall be for replacement only; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; $1,207,550,000, to remain available for obligation until September 30, 1991: *Provided,* That of the funds appropriated in this paragraph, $57,050,000 shall not be obligated or expended until authorized by law.

DEFENSE PRODUCTION ACT PURCHASES

For purchases or commitments to purchase metals, minerals, or other materials by the Department of Defense pursuant to section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093); $39,500,000, of which $27,500,000 shall

remain available for obligation until September 30, 1991, and of which $12,000,000 for a project to develop a reliable supply of titanium ore from ilemenite shall remain available until September 30, 1993.

SPACE AND RELATED ACTIVITIES
AUGMENTATION, DEFENSE

For construction, procurement, and modification of missiles, spacecraft, specialized ground facilities, and associated equipment and services; $637,000,000, to remain available for obligation until September 30, 1991: *Provided,* That none of the funds shall be obligated or expended until authorized by law: *Provided further,* That none of the funds shall be available except for projects for which funds have otherwise been made available in this Act and except for conversion of existing contracts from an incremental funding basis to a full funding basis: *Provided further,* That none of the funds shall be available for expenditure prior to October 1, 1989.

Mr. CHAPPELL (during the reading). Mr. Chairman, I ask unanimous consent that title III be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there points of order against title III?

Are there amendments to title III?

The Clerk will read.

The Clerk read as follows:

TITLE IV

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $5,042,965,000, to remain available for obligation until September 30, 1990: *Provided,* That $7,300,000 shall be available only for type classification and operational testing of the 120 millimeter mortar system and development of a family of enhanced 120 millimeter ammunition: *Provided further,* That $2,500,000 shall be available only for the vehicular intercommunications system: *Provided further,* That $5,000,000 shall be available only for development of fluidtronics technology for use in ground combat or support vehicles.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $9,136,405,000, to remain available for obligation until September 30, 1990: *Provided,* That $1,000,000 shall be made available for personnel and other expenses for the Institute for Technology Development, as a grant, for the National Center for Physical Acoustics: *Provided further,* That funds made available for the SSN-688 Class Vertical Launch System and the AN/BSY-1 Submarine Combat System programs may not be obligated or expended until thirty days after the reports required by section 211(e) of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180) are submitted to the Committees on Appropriations of the House of Representatives and the Senate.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $14,313,135,000, to remain available for obligation until September 30, 1990: *Provided,* That funds made available for the Titan IV program may not be obligated or expended until the Secretary of Defense certifies that no funds other than those provided in Research, Development, Test, and Evaluation (RDT&E) appropriation accounts will be obligated or expended for RDT&E costs for the Solid Rocket Motor Upgrade project, and until the report required on page 205 of House Report 100-410, concerning the commercialization of research, development, test, and evaluation costs, is submitted to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further,* That $2,000,000 shall be available only for development of high thermal stability and/or endothermic jet fuels, including studies on coal based fuels.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE AGENCIES

For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test, and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $7,468,757,000, to remain available for obligation until September 30, 1990: *Provided,* That $114,000,000 shall be made available only for the Advanced Submarine Technology Program as described in section 231 of the National Defense Authorization Act for Fiscal Year 1989 (H.R. 4264), as passed the House of Representatives on May 11, 1988, except that funds may be obligated for test facilities: *Provided further,* That $25,000,000 shall be made available only for the Tactical Airborne Laser Communications Program: *Provided further,* That the Secretary of Defense shall award the funds made available in this Act for the University Research Initiative Program on the basis of competition; and, that none of the funds may be obligated or expended until the Appropriations and Armed Services Committees of the House and Senate approve a plan submitted by the Secretary of Defense to provide for broader geographic distribution of funds under such program in comparison to the distribution of such funds during fiscal year 1986 and 1987; and, sets aside a portion of the funds available for such program for fiscal year 1989 to implement such a plan: *Provided further,* That section 215(c) of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180) is repealed.

DEVELOPMENTAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, of independent activities of the Deputy Under Secretary of Defense, Developmental Test and Evaluation in the direction and supervision of developmental test and evaluation, including performance and joint developmental testing and evaluation; and administrative expenses in connection therewith; $155,900,000, to remain available for obligation until September 30, 1990.

OPERATIONAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith; $12,234,000, to remain available for obligation until September 30, 1990.

Mr. CHAPPELL (during the reading). Mr. Chairman, I ask unanimous consent that title IV be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there points of order against title IV?

Are there amendments to title IV?

Mr. AUCOIN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I support the bill that the Defense Appropriations Subcommittee brings to the floor today, and I want to compliment our chairman, the gentleman from Florida [Mr. CHAPPELL], and the ranking Republican on the committee, the gentleman from Pennsylvania [Mr. MCDADE], and the members of the committee on both sides of the aisle for fashioning a good product.

Mr. Chairman, I'm going to take a few minutes to address the severe defense budget difficulties we face as a result of the unsteady and poorly planned military spending binge which the administration has indulged in over the past 7 years.

In the first year of the Reagan administration, we saw a peacetime record 14.9 percent increase in real budget authority over the previous year.

This binge continued with average annual increases of 12 percent for 5 years, reaching its peak in fiscal year 1985, when we appropriated budget authority of $334 billion.

This is in constant 1989 dollars, as will be all the figures I cite today. The budget authority in that 1985 peak year provided a total increase of 60 percent over the last Carter year, and was well above the peak spending of the Vietnam war.

Just as the unfinanced Vietnam war began the cycle of megadeficits, so the unfinanced Reagan military dollar escalation began a cycle of megadeficits, in which this one administration, advertising itself as fiscally conservative, has written far more hot checks than all previous administrations combined—from George Washington through Jimmy Carter.

In 1985, we finally found we had no choice but to confront reality, so we passed Gramm-Rudman and defense spending began to come down. The bill before us today appropriates $299.5 billion, which is 0.6 percent below the previous year and 10.4 percent below the 1985 peak, but still 39.1 percent above the last Carter year and about equal to the Vietnam peak.

Overall, the increase was not planned well, and the decrease has been planned even less well. Here are three examples, one from each service:

We have committed to two new aircraft carriers. This was a good idea—but if you're going to buy aircraft carriers you also have to budget the planes to put on them, and that the administration has not done.

If you use planned service life in flying hours as the predictor of retirement dates, by 1994 the U.S. Navy will be short 592 combat aircraft. Now the Navy says it will solve this by running some of the aircraft longer than planned. But even on this basis, we will be short 176 combat aircraft by 1994. And since we have to buy roughly 150 aircraft in order to field a carrier wing, the administration has put us in the position of basically looking at one useless $3 billion aircraft carrier with a blank deck because the administration has failed to coordinate its right hand with its left.

The Air Force is already feeling the pinch of misplaced priorities. Earlier this year I visited one of our F-111 bases in England. This is the home of the most capable deep-interdiction force we have in NATO. But the maintenance squadron commander there told me he has sometimes had 30 percent of his planes unable to fly because of unavailable spare parts. This is the (quote, unquote) "ships unable to sail and planes unable to fly" syndrome on which Ronald Reagan campaigned against Jimmy Carter in 1980. And here it is happening under Reagan's own administration.

The Army is possibly heading for the worst mistake of all. Recent indications are that in the critical avanced antitank weapon system—medium, the Army intends to choose a completely inadequate candidate weapon, simply because its unit cost is lower. I will have more to say about this later.

Where do we go from here? There's no painless answer. But a few guidelines clearly need to be followed.

First, our force planners must face reality.

We still hear them basing their plans on the presumption of something on the order of 2 percent real budget growth per year.

Mr. Chairman, that's Disneyland.

Mr. Chairman, there's no way the Department of Defense will get real growth in the midst of massive deficit reduction with the American people adamantly opposed to a tax increase. Reality is causing defense spending to decline—perhaps to halfway between the last Carter year and the Reagan peak.

We still can have an extremely effective defense at this level, but only if we face reality and plan for it.

Second, we need to ruthlessly prune out those programs which do not contribute to national security but have been kept alive through political support. I would put star wars at the head of the list of things we can do without.

Finally, we need to take advantage of international opportunities to reduce our military requirements.

There is powerful evidence that the Soviet Government is feeling the weight of its military spending even more than we, and that a major downward restructuring of the military standoff is within reach of the next administration.

The first step, which the House passed in the authorization bill, should be to come into full compliance with SALT II; this would let us retire six Poseidon submarines next year and save $125 million each in operating costs.

The second step should be a negotiated ban on testing ballistic missiles, nuclear warheads, and space weapons. This would save about 2 percent of the defense budget immediately, and much more down the road.

The third step should be a modified START Treaty, reducing force size while increasing stability. And finally, the fourth step should be a large negotiated reduction in conventional forces, with primary stress on reducing offensive strike forces.

This is I freely admit, an ambitious prescription. But the risks involved are far preferable to the those we will certainly bring on ourselves if we continue business as usual.

"Business as usual" means spending more on DOD and getting less security. It means exposing America to the decline that fell over Spain in the 16th century, and over England in the early 1900's—because the military load they tried to maintain was greater than their economic base could support.

The CHAIRMAN pro tempore. Are there amendments to title IV?

The Clerk will read.

The Clerk read as follows:

TITLE V

REVOLVING AND MANAGEMENT FUNDS

ARMY STOCK FUND

For the Army stock fund; $321,900,000: *Provided,* That of the funds appropriated in this paragraph, $15,000,000 shall not be obligated or expended until authorized by law.

NAVY STOCK FUND

For the Navy stock fund; $204,700,000.

AIR FORCE STOCK FUND

For the Air Force stock fund; $206,900,000.

DEFENSE STOCK FUND

For the Defense stock fund; $30,000,000: *Provided,* That of the funds appropriated in this paragraph $5,000,000 shall not be obligated or expended until authorized by law.

FOREIGN CURRENCY FLUCTUATION, DEFENSE

(INCLUDING TRANSFER OF FUNDS)

For the Foreign Currency Fluctuation, Defense; $376,000,000: *Provided,* That this appropriation shall be available to transfer funds between this account and appropriations available to the Department of Defense for military personnel and operation and maintenance expenses with regard to obligations incurred after September 30, 1988: *Provided further,* That in transferring funds between this appropriation and appropriations for military personnel expenses, the substantial gains and losses to the appropriations for military personnel expenses related only to Cost of Living Allowances and Housing Allowances caused by fluctuations in foreign currency rates that vary substantially from those used in preparing budget submissions, may be based on budgetary estimates rather than accounting records: *Provided further,* That the funds appropriated in this paragraph shall not be obligated or expended until authorized by law.

Mr. CHAPPELL. (during the reading). Mr. Chairman, I ask unanimous consent that title V be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there points of order against title V?

Are there amendments to title V?

Mr. GONZALEZ. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in order to address some questions, preferably to the ranking minority members in charge of this.

Earlier in the remarks of the gentleman from Pennsylvania [Mr. MCDADE], he referred to the fact that we, indeed, would be looking forward to the defense managers facing some budgetary crisis and the like.

The gentleman is well aware those that have agitated since February, because, as I understand it, not that the defense administrators or any of the departments themselves were exceeding the budget targets, but because of the inflexibility that resulted from capping the discretionary judgment of the managers to transfer inner funding sums; is there anything here that continues that inflexibility?

Mr. MCDADE. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I am happy to yield to the gentlemam.

Mr. MCDADE. Mr. Chairman, let me say that the decision that was made to restrict funding came within the Department of Defense, and it came because their internal mechanisms, the Comptroller and the people who watch their accounts, indicated to

them that they were about to exceed the outlays that had been agreed to and the budget. I think it is principally outlays, not so much budget authority, within the figures that were agreed to in the summit.

As a result of that, they felt that they were, that is to say that the Department was, in a situation where they had to pull a brake on outlays until at least the end of June in order to try to recoup expenditures and get back into a level where they would be within the summit. They have done that. We have not fettered them in terms of that discretion.

In fact, may I say to my distinguished colleague, the gentleman from Texas [Mr. GONZALEZ], that we have tried to give them some more flexibility to manage the problem within their own accounts by boosting what they call their transferability within various accounts. We have increased that by well over $1 billion precisely to try to deal with the problem the gentleman raises.

Mr. GONZALEZ. Mr. Chairman, I thank the distinguished gentleman, and I am very happy to hear that.

Mr. Chairman, there was one additional question having to do with section 8019 on the Civilian Health and Medical Program.

As the gentleman knows, our service personnel ever since the war recedes into the background with respect to medical care and have constantly faced erosion in what we have offered the active-duty serviceman and his dependants particularly.

Is this definition here about none of the funds contained in this act available for the Civilian Health and Medical Program shall be available for reimbursement of any physician or other authorized individual provider of medical care in excess of the eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished, as determined for physicians in accordance with section 1079, does that predict a diminution, or does that provide a little bit more realistic use of CHAMPUS?

Mr. McDADE. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. I am happy to yield to the gentleman.

Mr. McDADE. Mr. Chairman, it is our effort to make CHAMPUS be used in a more realistic fashion.

May I say to my colleague that this has been the law that was written in the Committee on Armed Services, the authorizing committee, for some time, and in order to try to buttress it, we, of course, follow what the authorizing committee is doing by imposing the limitation of 80 percent.

□ 1450

May I say we are appropriating about $6 billion in the bill for medical care for service people, and we share the gentleman's concern. We want to deal with that problem as effectively as we can.

We have appropriated additional dollars for medical staffing to try to cope with areas where the hirings showed there were shortfalls, even may I say to my friend on bases where they could not get physicians or nurses. It was a difficult problem, so we have appropriated additional dollars. What we are carrying here is an effort to say use CHAMPUS in a realistic way, help us to try to get this problem under control and treat our military and their dependents with first rate medical care.

Mr. GONZALEZ. I thank the gentleman from Pennsylvania and wish to compliment both him and the chairman of the subcommittee and the members thereof for a good job.

Mr. McDADE. I thank my colleague and appreciate that.

The CHAIRMAN pro tempore (Mr. GRAY of Illinois). Are there any amendments to title V?

The Clerk will read.

The Clerk read as follows:

TITLE VI

CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE

For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986; $375,400,000, of which $117,300,000 shall remain available for obligation until September 30, 1989, $17,900,000 shall remain available for obligation until September 30, 1990, $127,400,000 shall remain available for obligation until September 30, 1991, and $112,800,000 shall remain available for obligation until September 30, 1993: *Provided*, That of the funds appropriated in this paragraph $137,900,000 shall not be obligated or expended until authorized by law.

Mr. CHAPPELL (during the reading). Mr. Chairman, I ask unanimous consent that title VI be considered as read, printed in the RECORD, and open to amendment at any point

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there any points of order against title VI?

Are there any amendments to title VI?

Mr. GORDON. Mr. Chairman, I move to strike the last word.

Mr. GORDON. Mr. Chairman, in January of this year the Army's Air Traffic Control Advisory Services, at the request of Congress, conducted a survey that found a clear need to improve safety at the Smyrna, TN, airport.

Accordingly, the Tennessee Army National Guard has begun providing air traffic control advisory services at Smyrna, making flight operations much safer while providing necessary training for National Guard controllers.

I would like to ask the gentleman from Florida if I am correct in my understanding that the funds provided in this bill for Army National Guard operation and maintenance include an amount sufficient for the Tennessee Army National Guard to continue providing air traffic control services to all aviation traffic at the Smyrna Airport.

Mr. CHAPPELL. If the gentleman will yield, the committee agrees with the requirement for funding of the air traffic control tower at Smyrna. It is my understanding that the Army National Guard's operations and maintenance budget will continue to support this activity, consistent with National Guard usage.

Mr. GORDON. I thank the gentleman from Florida, and I yield the balance of my time.

Ms. OAKAR. Mr. Chairman, I move to strike the last word for the purpose of engaging the distinguished chairman of the subcommittee in a short colloquy.

Mr. Chairman, I am very concerned about the Defense Logistics Agency, for which my area has regional responsibility, transferring jobs based on a report that was supposed to come out in October that they never apparently completed, and they, however, have announced that they will transfer jobs from one area to another. It seems to me we are all waiting for their comprehensive report, but it did not materialize. Yet they made an announcement relating to the transfer of jobs.

I guess, basically, rather than introduce an amendment that was provincial, knowing of the Chair's concern about the manner in which the Department operates dealing in a fair manner, et cetera, I would just like to ask the chairman if he feels the committee would work closely with the Defense Department to make sure that they have the proper data related to transferring of jobs relative to the Defense Logistics Agency regional office, which is located in Cleveland, OH?

Mr. CHAPPELL. Mr. Chairman, will the gentlewoman yield?

Ms. OAKAR. I yield to the gentleman from Florida.

Mr. CHAPPELL. Mr. Chairman, I would say to the gentlewoman from Ohio that this committee will work to make certain insofar as we can that such transfers are based upon proper facts, and that in order for those transfers to be made, there is a need for that transfer shown by proper study, and that it should not be done for political reasons or otherwise but for the efficiency of the Government.

Ms. OAKAR. I really want to thank the chairman of the subcommittee. That is the most we want and we appreciate his leadership on this issue and on other issues.

The CHAIRMAN pro tempore. Are there any amendments to title VI?

The Clerk will read.

The Clerk read as follows:

TITLE VII

RELATED AGENCIES

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System; $144,500,000.

INTELLIGENCE COMMUNITY STAFF

For necessary expenses of the Intelligence Community Staff; $23,645,000.

Mr. CHAPPELL (during the reading). Mr. Chairman, I ask unanimous consent that title VII be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there any points of order against title VII?

Are there any amendments to title VII?

The Clerk will read.

The Clerk read as follows:

TITLE VIII

GENERAL PROVISIONS

SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 8002. During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 3109 of title 5, United States Code, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty stations and return as may be authorized by law: *Provided*, That such contracts may be renewed annually.

SEC. 8003. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense.

SEC. 8004. The Secretary of Defense and each purchasing and contracting agency of the Department of Defense shall assist American small and minority-owned business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this Act by increasing, to an optimum level, the resources and number of personnel jointly assigned to promoting both small and minority business involvement in purchases financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this Act, and by assisting small and minority business concerns to participate equitably as subcontractors on contracts financed with funds appropriated herein, and by otherwise advocating and providing small and minority business opportunities to participate in the furnishing of commodities and services financed with funds appropriated by this Act.

SEC. 8005. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.

SEC. 8006. No part of the appropriations in this Act shall be available for any expense of operating aircraft under the jurisdiction of the armed forces for the purpose of proficiency flying, as defined in Department of Defense Directive 1340.4, except in accordance with regulations prescribed by the Secretary of Defense. Such regulations (1) may not require such flying except that required to maintain proficiency in anticipation of a member's assignment to combat operations and (2) such flying may not be permitted in cases of members who have been assigned to a course of instruction of ninety days or more.

SEC. 8007. No part of any appropriation contained in this Act shall be available for expense of transportation, packing, crating, temporary storage, drayage, and unpacking of household goods and personal effects in any one shipment having a net weight in excess of eighteen thousand pounds.

SEC. 8008. No more than 20 per centum of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last two months of the fiscal year: *Provided*, That this section shall not apply to obligations for support of active duty training of civilian components or summer camp training of the Reserve Officers' Training Corps, or the National Board for the Promotion of Rifle Practice, Army.

SEC. 8009. During the current fiscal year, the agencies of the Department of Defense may accept the use of real property from foreign countries for the United States in accordance with mutual defense agreements or occupational arrangements and may accept services furnished by foreign countries as reciprocal international courtesies or as services customarily made available without charge; and such agencies may use the same for the support of the United States forces in such areas without specific appropriation therefor.

In addition to the foregoing, agencies of the Department of Defense may accept real property, services, and commodities from foreign countries for the use of the United States in accordance with mutual defense agreements or occupational arrangements and such agencies may use the same for the support of the United States forces in such areas, without specific appropriations therefor: *Provided*, That the foregoing authority shall not be available for the conversion of heating plants from coal to oil or coal to natural gas at defense facilities in Europe: *Provided further*, That within thirty days after the end of each quarter the Secretary of Defense shall render to Congress and to the Office of Management and Budget a full report of such property, supplies, and commodities received during such quarter.

SEC. 8010. No part of any appropriation contained in this Act, except for small purchases in amounts not exceeding $25,000, shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand or measuring tools, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided*, That nothing herein shall preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possessions when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements or where such procurement is necessary in furtherance of the standardization and interoperability of equipment requirements within NATO so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act and with section 2457 of title 10, United States Code: *Provided further*, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions: *Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further*, That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

SEC. 8011. During the current fiscal year, appropriations available to the Department of Defense for pay of civilian employees shall be available for uniforms, or allowances therefor, as authorized by section 5901 of title 5, United States Code.

SEC. 8012. Funds provided in this Act for legislative liaison activities of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Office of the Secretary of Defense shall not exceed $15,000,000 for the current fiscal year: *Provided*, That this amount shall be

available for apportionment to the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Office of the Secretary of Defense as determined by the Secretary of Defense: *Provided further,* That costs for military retired pay accrual shall be included within this limitation.

SEC. 8013. Of the funds made available by this Act for the services of the Military Airlift Command, $100,000,000 shall be available only for procurement of commercial transportation service from carriers participating in the civil reserve air fleet program; and the Secretary of Defense shall utilize the services of such carriers which qualify as small businesses to the fullest extent found practicable: *Provided,* That the Secretary of Defense shall specify in such procurement, performance characteristics for aircraft to be used based upon modern aircraft operated by the civil reserve air fleet.

(TRANSFER OF FUNDS)

SEC. 8014. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $2,500,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided,* That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by Congress: *Provided further,* That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority.

(TRANSFER OF FUNDS)

SEC. 8015. During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided,* That transfers may be made between such funds in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that transfers between a stock fund account and an industrial fund account may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

SEC. 8016. None of the funds available to the Department of Defense in this Act shall be utilized for the conversion of heating plants from coal to oil or coal to natural gas at defense facilities in Europe.

SEC. 8017. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 days in advance to the Committees on Appropriations and Armed Services of the Senate and House of Representatives.

SEC. 8018. No part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress.

SEC. 8019. None of the funds contained in this Act available for the Civilian Health and Medical Program of the Uniformed Services under the provisions for section 1079(a) of title 10, United States Code, shall be available for reimbursement of any physician or other authorized individual provider of medical care in excess of the eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished, as determined for physicians in accordance with section 1079(h) of title 10, United States Code.

SEC. 8020. No appropriation contained in this Act may be used to pay for the cost of public affairs activities of the Department of Defense in excess of $51,600,000: *Provided,* That costs for military retired pay accrual shall be included within this limitation.

SEC. 8021. None of the funds provided in this Act shall be available for the planning or execution of programs which utilize amounts credited to Department of Defense appropriations or funds pursuant to the provisions of section 37(a) of the Arms Export Control Act representing payment for the actual value of defense articles specified in section 21(a)(1)(A) of that Act: *Provided,* That such amounts shall be credited to the Special Defense Acquisition Fund, as authorized by law, or, to the extent not so credited shall be deposited in the Treasury as miscellaneous receipts as provided in section 3302(b) of title 31, United States Code.

SEC. 8022. No appropriation contained in this Act shall be available to fund any costs of a Senior Reserve Officers' Training Corps unit—except to complete training of personnel enrolled in Military Science 4—which in its junior year class (Military Science 3) has for the four preceding academic years, and as of September 30, 1983, enrolled less than (a) seventeen students where the institution prescribes a four-year or a combination four- and two-year program; or (b) twelve students where the institution prescribes a two-year program: *Provided,* That, notwithstanding the foregoing limitation, funds shall be available to maintain one Senior Reserve Officers' Training Corps unit in each State and at each State-operated maritime academy: *Provided further,* That units under the consortium system shall be considered as a single unit for purposes of evaluation of productivity under this provision: *Provided further,* That enrollment standards contained in Department of Defense Directive 1215.8 for Senior Reserve Officers' Training Corps units, as revised during fiscal year 1981, may be used to determine compliance with this provision, in lieu of the standards cited above.

SEC. 8023. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 1990.

SEC. 8024. None of the funds appropriated by this Act may be used to support more than 9,901 full-time and 2,603 part-time military personnel assigned to or used in the support of Morale, Welfare, and Recreation activities as described in Department of Defense Instruction 7000.12 and its enclosures, dated September 4, 1980.

SEC. 8025. All obligations incurred in anticipation of the appropriations and authority provided in this Act are hereby ratified and confirmed if otherwise in accordance with the provisions of this Act.

SEC. 8026. During the current fiscal year, the Department of Defense may enter into contracts to recover indebtedness to the United States pursuant to section 3718 of title 31, United States Code.

SEC. 8027. None of the funds appropriated by this Act shall be available for a contract for studies, analyses, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines:

(a) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work, or

(b) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source, or

(c) where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support:

Provided, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

SEC. 8028. None of the funds appropriated by this Act shall be available to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department of Defense is reimbursed for the costs of providing such care: *Provided,* That reimbursements for medical care covered by this section shall be credited to the appropriations against which charges have been made for providing such care, except that inpatient medical care may be provided in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel in that foreign country.

SEC. 8029. None of the funds appropriated by this Act shall be obligated for the second career training program authorized by Public Law 96-347.

SEC. 8030. None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year for the purposes of demilitarization of surplus nonautomatic firearms less than .50 caliber.

SEC. 8031. None of the funds provided in this Act shall be available to initiate (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000, or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the Com-

mittees on Appropriations and Armed Services of the Senate and House of Representatives have been notified at least thirty days in advance of the proposed contract award: *Provided,* That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further,* That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further,* That no multiyear procurement contract can be terminated without 10-day prior notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate: *Provided further,* That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement. Funds appropriated in title III of this Act may be used for multiyear procurement contracts as follows:

H-60 series helicopter engines;
CH-47 helicopter modifications;
Multiple Launch Rocket System;
AV-8B aircraft;
UHF follow-on satellite system;
F-16 aircraft;
AH-64 helicopters (for four years);
M-1 tank chassis;
CH/MH-53E helicopter.

SEC. 8032. None of the funds appropriated by this Act which are available for payment of travel allowances for per diem in lieu of subsistence to enlisted personnel shall be used to pay such an allowance to any enlisted member in an amount that is more than the amount of per diem in lieu of subsistence that the enlisted member is otherwise entitled to receive minus the basic allowance for subsistence, or pro rata portion of such allowance, that the enlisted member is entitled to receive during any day, or portion of a day, that the enlisted member is also entitled to be paid a per diem in lieu of subsistence.

SEC. 8033. None of the funds appropriated by this Act shall be available to approve a request for waiver of the costs otherwise required to be recovered under the provisions of section 21(e)(1)(C) of the Arms Export Control Act unless the Committees on Appropriations have been notified in advance of the proposed waiver.

SEC. 8034. None of the funds in this Act may be used to transfer any article of military equipment or data related to the manufacture of such equipment to a foreign country prior to the approval in writing of such transfer by the Secretary of the military service involved.

(TRANSFER OF FUNDS)

SEC. 8035. None of the funds appropriated in this Act may be made available through transfer, reprogramming, or other means between the Central Intelligence Agency and the Department of Defense for any intelligence or special activity different from that previously justified to the Congress unless the Director of Central Intelligence or the Secretary of Defense has notified the House and Senate Appropriations Committees of the intent to make such funds available for such activity.

SEC. 8036. None of the funds available to the Department of Defense in this Act shall be used by the Secretary of a military department to purchase coal or coke from foreign nations for use at United States defense facilities in Europe when coal from the United States is available.

SEC. 8037. None of the funds appropriated by this Act may be used to appoint or compensate more than 39 individuals in the Department of Defense in positions in the Executive Schedule (as provided in sections 5312-5316 of title 5, United States Code).

SEC. 8038. None of the funds appropriated by this Act shall be available to convert a position in support of the Army Reserve, Air Force Reserve, Army National Guard, and Air National Guard occupied by, or programmed to be occupied by, a (civilian) military technician to a position to be held by a person in an active Guard or Reserve status if that conversion would reduce the total number of positions occupied by, or programmed to be occupied by, (civilian) military technicians of the component concerned, below 70,325: *Provided,* That none of the funds appropriated by this Act shall be available to support more than 46,622 positions in support of the Army Reserve, Army National Guard or Air National Guard occupied by, or programmed to be occupied by, persons in an active Guard or Reserve status: *Provided further,* That none of the funds appropriated by this Act may be used to include (civilian) military technicians in computing civilian personnel ceilings, including statutory or administratively imposed ceilings, on activities in support of the Army Reserve, Air Force Reserve, Army National Guard or Air National Guard.

SEC. 8039. (a) The provisions of section 115(b)(2) of title 10, United States Code, shall not apply with respect to fiscal year 1989 or with respect to the appropriation of funds for that year.

(b) During fiscal year 1989, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year, or any constraint or limitation carried out through the measurement of full time equivalent employees, or for payroll allocation methodologies for industrially funded activities.

(c) The fiscal year 1990 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 1990 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 1990.

(TRANSFER OF FUNDS)

SEC. 8040. Appropriations during the current fiscal year may be transferred to appropriations provided in this Act for research, development, test, and evaluation to the extent necessary to meet increased pay costs authorized by or pursuant to law, to be merged with and to be available for the same purposes, and the same time period, as the appropriation to which transferred.

SEC. 8041. None of the funds made available by this Act shall be used in any way for the leasing to non-Federal agencies in the United States aircraft or vehicles owned or operated by the Department of Defense when suitable aircraft or vehicles are commercially available in the private sector: *Provided,* That nothing in this section shall affect authorized and established procedures for the sale of surplus aircraft or vehicles: *Provided further,* That nothing in this section shall prohibit the leasing of helicopters authorized by section 1463 of the Department of Defense Authorization Act of 1986.

SEC. 8042. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

SEC. 8043. No funds available to the Department of Defense during the current fiscal year may be used to enter into any contract with a term of eighteen months or more or to extend or renew any contract for a term of eighteen months or more, for any vessel, aircraft or vehicles, through a lease, charter, or similar agreement without previously having been submitted to the Committees on Appropriations of the House of Representatives and the Senate in the budgetary process: *Provided,* That any contractual agreement which imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the Government exceeding 50 per centum of the original purchase value of the vessel, aircraft, or vehicle must have specific authority in an appropriation Act for the obligation of 10 per centum of such termination liability.

SEC. 8044. None of the funds made available by this Act shall be available to operate in excess of 247 commissaries in the contiguous United States.

SEC. 8045. None of the funds provided in this Act shall be used to procure aircraft ejection seats manufactured in any foreign nation that does not permit United States manufacturers to compete for ejection seat procurement requirements in that foreign nation. This limitation shall apply only to ejection seats procured for installation on aircraft produced or assembled in the United States.

SEC. 8046. None of the funds appropriated by this Act shall be obligated for the pay of any individual who is initially employed after the date of enactment of this Act as a technician in the administration and training of the Army Reserve and the maintenance and repair of supplies issued to the Army Reserve unless such individual is also a military member of the Army Reserve troop program unit that he or she is employed to support. Those technicians employed by the Army Reserve in areas other than Army Reserve troop program units need only be members of the Selected Reserve.

SEC. 8047. None of the funds appropriated by this Act shall be used to purchase dogs or cats or otherwise fund the use of dogs or cats for the purpose of training Department of Defense students or other personnel in surgical or other medical treatment of wounds produced by any type of weapon: *Provided,* That the standards of such training with respect to the treatment of animals shall adhere to the Federal Animal Welfare Law and to those prevailing in the civilian medical community.

SEC. 8048. None of the funds made available by this Act shall be used to initiate full-scale engineering development of any major defense acquisition program until the Secretary of Defense has provided to the Committees on Appropriations of the House and Senate—

(a) a certification that the system or subsystem being developed will be procured in quantities that are not sufficient to warrant development of two or more production sources, or

(b) a plan for the development of two or more sources for the production of the system or subsystem being developed.

SEC. 8049. None of the funds available to the Department of Defense may be used for the floating storage of petroleum or petroleum products except in vessels of or belonging to the United States.

SEC. 8050. Of the funds made available to the Department of the Air Force in this Act, not less than $11,749,000 shall be available for the Civil Air Patrol.

SEC. 8051. Funds available to the Department of Defense may be used by the Department of Defense for the use of helicopters and motorized equipment at Defense installations for removal of feral burros and horses.

SEC. 8052. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 403(a) of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 403(b) of chapter 20 of title 10, United States Code, and these obligations shall be reported to Congress on September 30 of each year: *Provided,* That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99-239.

SEC. 8053. Notwithstanding any other provision of law, the Secretaries of the Army and Air Force may authorize the retention in an active status until age sixty of any officer who would otherwise be removed from an active status and who is employed as a National Guard or Reserve technician in a position in which active status in a reserve component of the Army or Air Force is required as a condition of that employment.

SEC. 8054. It is the sense of the Congress that competition, which is necessary to enhance innovation, effectiveness, and efficiency, and which has served our Nation so well in other spheres of political and economic endeavor, should be expanded and increased in the provision of our national defense.

SEC. 8055. None of the funds appropriated by this Act shall be available to pay a dislocation allowance pursuant to section 407 of title 37, United States Code, in excess of one month's basic allowance for quarters.

SEC. 8056. None of the funds available to the Department of Defense shall be obligated or expended to contract out any activity currently performed by the Defense Personnel Support Center in Philadelphia, Pennsylvania: *Provided,* That this provision shall not apply after notification to the Committees on Appropriations of the House of Representatives and the Senate of the results of the cost analysis of contracting out any such activity.

SEC. 8057. Funds available for operation and maintenance under this Act, may be used in connection with demonstration projects and other activities authorized by section 1092 of title 10, United States Code.

SEC. 8058. None of the funds appropriated by this Act shall be used to make contributions to the Department of Defense Education Benefits Fund pursuant to section 2006(g) of title 10, United States Code, representing the normal cost for future benefits under section 1415(c) of title 38, United States Code, for any member of the armed services who, on or after the date of enactment of this Act, receives an enlistment bonus under section 308a or 308f of title 37, United States Code; nor shall any amounts representing the normal cost of such future benefits be transferred from the Fund by the Secretary of the Treasury to the Administrator of Veterans' Affairs pursuant to section 2006(d) of title 10, United States Code; nor shall the Administrator pay such benefits to any such member.

SEC. 8059. Notwithstanding any other provision of law, during fiscal year 1989, the Department of Defense shall conduct an expanded pilot project of providing home health care as part of an individualized case-managed range of benefits that may reasonably deviate from otherwise payable types, amounts and levels of care, in up to four geographic areas containing no more than one-fourth of the Department's beneficiaries, for dependents entitled to health care under sections 1079 and 1086 of title 10, United States Code, with the patients selected from those with exceptionally serious, long-range, costly and incapacitating physical or mental conditions defined by the Secretary of Defense as likely to benefit from the range of demonstration benefits: *Provided,* That although the cost may be greater in a specific case, the net benefit cost to the Department of Defense shall not exceed that which could reasonably have been expected to occur in the absence of the demonstration: *Provided further,* That outside of the areas selected, the home health care pilot project as directed and implemented in fiscal years 1986 and 1987 shall be continued.

SEC. 8060. Funds appropriated in this Act shall be available for the payment of not more than 75 percent of the charges of a postsecondary educational institution for the tuition or expenses of an officer in the Ready Reserve of the Army National Guard or Army Reserve for education or training during his off-duty periods, except that no part of the charges may be paid unless the officer agrees to remain a member of the Ready Reserve for at least four years after completion of such training or education.

SEC. 8061. Notwithstanding any other provision of law, none of the funds appropriated by this Act shall be available to pay more than 50 percent of an amount paid to any person under section 308 of title 37, United States Code, in a lump sum.

SEC. 8062. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of enactment of this Act, is performed by more than ten Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate.

(TRANSFER OF FUNDS)

SEC. 8063. Upon a determination by the Secretary of Defense that such action will result in a more economical acquisition of automatic data processing equipment, funds provided in this Act under one appropriation account for the lease or purchase of such equipment may be transferred through the Automatic Data Processing Equipment Management Fund to another appropriation account in this Act for the lease or purchase of automatic data processing equipment to be merged with and to be available for the same purposes, and for the same time period, as the appropriation to which transferred: *Provided,* That within thirty days after the end of each quarter the Secretary of Defense shall report transfers made under this section to the Committees on Appropriations of the Senate and the House of Representatives: *Provided further,* That the authority to transfer funds under this section shall be in addition to any other transfer authority contained in this Act: *Provided further,* That $22,300,000 shall be provided to the Army for procurement of Tactical Army Combat Service Support Computer Systems.

SEC. 8064. Appropriations available to the Department of Defense during the current fiscal year shall be available, under such regulations as the Secretary of Defense may deem appropriate, to exchange or furnish mapping, charting, and geodetic data, supplies or services to a foreign country pursuant to an agreement for the production or exchange of mapping, charting, and geodetic data.

SEC. 8065. None of the funds appropriated in this Act to the Department of the Army may be obligated for procurement of 120mm mortars or 120mm mortar ammunition manufactured outside of the United States: *Provided,* That this limitation shall not apply to procurement of such mortars or ammunition required for testing, evaluation, type classification or equipping the Army's Ninth Infantry Division (Motorized).

SEC. 8066. Appropriations made available to the Department of Defense by this Act may be used at sites formerly used by the Department of Defense for removal of unsafe buildings or debris of the Department of Defense: *Provided,* That such removal must be completed before the property is released from Federal Government control, other than property conveyed to State or local government entities or native corporations.

SEC. 8067. None of the funds appropriated in this Act may be obligated or expended to carry out a program to paint any naval vessel with paint known as organotin or with any other paint containing the chemical compound tributyltin until such time as the Environmental Protection Agency certifies to the Department of Defense that whatever toxicity as generated by organotin paints as included in Navy specifications does not pose an unacceptable hazard to the marine environment: *Provided,* That the Navy may use these funds to paint aluminum-hulled craft as necessary, and, in addition, the Navy may paint no more than fifteen steel-hulled ships to conduct research as described in the "Navy Organotin Program Plan for Two Case Study Harbors".

SEC. 8068. Notwithstanding any other provision of law, funds available in this Act shall be available to the Defense Logistics Agency to grant civilian employees participating in productivity-based incentive award programs paid administrative time off in lieu of cash payment as compensation for increased productivity.

SEC. 8069. None of the funds appropriated in this Act to the Department of the Army may be obligated for depot maintenance of equipment unless such funds provide for civilian personnel strengths at the Army depots performing communications-electronics depot maintenance at an amount above the strengths assigned to those depots on September 30, 1985: *Provided,* That the foregoing limitation shall not apply to civilian personnel who perform

caretaker-type functions at these installations: *Provided further,* That nothing in this provision shall cause undue reductions of other Army depots, as determined by the Secretary of the Army.

SEC. 8070. (a) None of the funds made available by this Act to the Department of Defense may be used to procure the Federal Supply Classes of machine tools set forth in subsection (b) of this section, for use in any government-owned facility or property under control of the Department of Defense, which machine tools were not manufactured in the United States or Canada.

(b) The procurement restrictions contained in subsection (a) shall apply to Federal Supply Classes of metalworking machinery in categories numbered 3405, 3408, 3410-3419, 3426, 3433, 3438, 3441-3443, 3445, 3446, 3448, 3449, 3460, and 3461.

(c) When adequate domestic supplies of the classifications of machine tools identified in subsection (b) are not available to meet Department of Defense requirements on a timely basis, the procurement restrictions contained in subsection (a) may be waived on a case by case basis by the Secretary of the Service responsible for the procurement.

(d) Subsection (a) shall not apply to contracts which are binding as of the date of enactment of this Act.

SEC. 8071. None of the funds appropriated or made available by this Act may be obligated for acquisition of major automated information systems which have not successfully completed oversight reviews required by Defense Department regulations: *Provided,* That none of the funds appropriated or made available by this Act may be obligated on Composite Health Care System acquisition contracts if such contracts would cause the total life cycle cost estimate of $1,100,000,000 expressed in fiscal year 1986 constant dollars to be exceeded.

SEC. 8072. None of the funds appropriated in this Act may be obligated or expended for the procurement, modification, product-improvement, or production qualification or prove-out of the five inch semi-active laser guided projectile (Deadeye).

SEC. 8073. Except where specifically increased or decreased elsewhere in this Act, the restrictions contained within appropriations, or provisions affecting appropriations or other funds, available during fiscal year 1989, limiting the amount which may be expended for personnel services, and including pay and allowances of military personnel and civilian employees, or for purposes involving personal services, or amounts which may be transferred between appropriations or authorizations available for or involving such services, are hereby increased to the extent necessary to meet increased pay costs authorized by or pursuant to law.

SEC. 8074. None of the funds provided by this Act may be used to pay the salaries of any person or persons who authorize the transfer of unobligated and deobligated appropriations into the Reserve for Contingencies of the Central Intelligence Agency.

SEC. 8075. Funds appropriated by this Act for construction projects of the Central Intelligence Agency, which are transferred to another Agency for execution, shall remain available until expended.

SEC. 8076. (a) The Secretary of Defense shall conduct through the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) a demonstration project on the treatment of alcoholism designed to compare the use of chemical aversion therapy with the use of other treatments. At the conclusion of the demonstration project, the Secretary shall submit to the Committees on Appropriations and Armed Services of the Senate and House of Representatives a report on the results of the project: *Provided,* That the demonstration project shall be conducted at only one location: *Provided further,* That coverage for chemical aversion therapy under this demonstration project is extended to those beneficiaries referred for such treatment by a physician, psychiatrist or psychologist recognized as an authorized provider under CHAMPUS.

(b) Until the report required by subsection (a) is submitted, the Secretary of Defense shall ensure that coverage of beneficiaries under section 1079(a) or 1086(a) of title 10, United States Code, shall continue under the provisions of subsection (a).

SEC. 8077. None of the funds appropriated by this Act shall be available for the operation and maintenance of contractor-owned, contractor-operated primary health care facilities unless the Department of Defense Inspector General agrees to conduct an inspection, audit and evaluation of these clinics.

SEC. 8078. Notwithstanding any other provision of law, the Secretary of the Navy may use funds appropriated to charter ships to be used as auxiliary minesweepers providing that the owner agrees that these ships may be activated as Navy Reserve ships with Navy Reserve crews used in training exercises conducted in accordance with law and policies governing Naval Reserve forces.

SEC. 8079. None of the funds in this Act may be used to issue a letter of intent to proceed with the phase-in of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) Reform Initiative until December 1, 1989.

SEC. 8080. None of the funds appropriated by this Act may be used by the Defense Logistics Agency to assign a supervisor's title or grade when the number of people he or she supervises is considered as a basis for this determination: *Provided,* That savings that result from this provision are represented as such in future budget proposals.

SEC. 8081. None of the funds appropriated by this Act shall be used to make contributions to the Department of Defense Education Benefits Fund pursuant to section 2006(g) of title 10, United States Code, representing the normal cost for future benefits under section 1415(c) of title 38, United States Code, for any member of the armed services who, on or after the date of the enactment of this Act, enlists in the armed services for less than three years; nor shall any amounts representing the normal cost of such future benefits be transferred from the Fund by the Secretary of the Treasury to the Administrator of Veterans Affairs pursuant to section 2006(d) of title 10, United States Code; nor shall the Administrator pay such benefits to any such member: *Provided,* That these limitations shall not apply to members in combat arms skills.

SEC. 8082. None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Administrator of Veterans Affairs from the Department of Defense Education Benefits Fund when the time spent as a full-time student is credited toward completion of a service commitment: *Provided,* That this provision shall not apply to those members who have reenlisted with this option prior to October 1, 1987: *Provided further,* That this provision applies to active components of the Army.

SEC. 8083. Funds appropriated or made available in this Act shall be obligated and expended to continue to fully utilize the facilities at the United States Army Engineer's Waterways Experiment Station, including the continued availability of the supercomputer capability and the planned upgrade of this capability: *Provided,* That none of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the Armed Services and Appropriations Committees of Congress that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

SEC. 8084. For the purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), the term program, project, and activity for appropriations contained in this Act shall be defined as the most specific level of budget items identified in the Department of Defense Appropriations Act, 1989, the accompanying House and Senate Committee reports, the conference report and accompanying joint explanatory statement of the managers of the Committee of Conference, the related classified annexes, and the P-1 and R-1 budget justification documents as subsequently modified by Congressional action: *Provided, however,* That the following exception to the above definition shall apply:

For the Military Personnel and the Operation and Maintenance accounts, the term "program, project, and activity" is defined as the appropriations accounts contained in the Department of Defense Appropriations Act.

SEC. 8085. (a) Of the funds appropriated to the Army, $109,895,000 shall be available only for the Reserve Component Automation System (RCAS): *Provided,* That none of these funds can be expended:

(1) except as approved by the Chief of the National Guard Bureau;

(2) unless RCAS resource management functions are performed by the National Guard Bureau;

(3) unless the RCAS contract source selection official is the Chief of the National Guard Bureau;

(4) to pay the salary of an RCAS program manager who has not been selected and approved by the Chief of the National Guard Bureau and chartered by the Chief of the National Guard Bureau and the Secretary of the Army;

(5) unless the Program Manager (PM) charter makes the PM accountable to the source selection official and fully defines his authority, responsibility, reporting channels and organizational structure;

(6) to pay the salaries of individuals assigned to the RCAS program management office, source selection evaluation board, and source selection advisory board unless such organizations are comprised of personnel chosen jointly by the Chiefs of the National Guard Bureau and the Army Reserve;

(7) to award a contract for development or acquisition of RCAS unless such contract is competitively awarded under procedures of OMB Circular A-109 for an integrated system consisting of software, hardware, and communications equipment and unless such contract precludes the use of Govern-

ment furnished equipment, operating systems, and executive and applications software; and

(8) unless RCAS performs its own classified information processing.

(b) None of the funds appropriated or made available in this Act are available for procurement of Tactical Army Combat Service Support Computer Systems (TACCS) unless at least 50 percent of the TACCS computers procured with Army fiscal year 1989 funds are provided to the Reserve Component.

(c) None of the funds appropriated in this Act are available for procurement of mini- and micro-computers for the Army Reserve Component until the RCAS contract is awarded.

SEC. 8086. None of the funds provided for the Department of Defense in this Act may be obligated or expended for fixed price-type contracts in excess of $10,000,000 for the development of a major system or subsystem unless the Under Secretary of Defense for Acquisition determines, in writing, that program risk has been reduced to the extent that realistic pricing can occur, and that the contract type permits an equitable and sensible allocation of program risk between the contracting parties: *Provided,* That the Under Secretary may not delegate this authority to any persons who hold a position in the Office of the Secretary of Defense below the level of Assistant Secretary of Defense: *Provided further,* That at least thirty days before making a determination under this section the Secretary of Defense will notify the Committees on Appropriations of the Senate and House of Representatives in writing of his intention to authorize such a fixed price-type developmental contract and shall include in the notice an explanation of the reasons for the determination.

SEC. 8087. Monetary limitations on the purchase price of a passenger motor vehicle shall not apply to vehicles purchased for intelligence activities conducted pursuant to Executive Order 12333 or successor orders.

SEC. 8088. Not to exceed $35,000,000 of the funds available to the Department of the Army during the current fiscal year may be used to fund the construction of classified military projects within the Continental United States, including design, architecture, and engineering services.

SEC. 8089. From the amounts appropriated in this Act, funds shall be available for Naval Air Rework Facilities to perform manufacturing in order to compete for production contracts of Defense articles: *Provided,* That the Navy shall certify that successful bids between Naval Air Rework Facilities and private companies for such production contracts include comparable estimates of all direct and indirect costs: *Provided further,* That competitions conducted under this authority shall not be subject to section 502 of the Department of Defense Authorization Act, 1981, as amended, section 307 of the Department of Defense Authorization Act, 1985, or Office of Management and Budget Circular A-76.

Sec. 8090. Notwithstanding any other provision of law or regulation, the Secretary of Defense may adjust wage rates for authorized civilian employees hired for certain health care occupations as authorized for the Administrator of the Veterans Affairs by section 4107(g) of title 38, United States Code: *Provided,* That only those occupations cited in the June 30, 1988 report submitted by the Assistant Secretary of Defense for Health Affairs shall be covered by this provision.

SEC. 8091. None of the funds available to the Department of Defense are available for obligation or expenditure to procure either directly or indirectly any goods or services from Toshiba Corporation or any of its subsidiaries, or from Kongsberg Vapenfabrik or any of its subsidiaries: *Provided,* That the Secretary of Defense may, on a case-by-case basis, waive the preceding prohibition upon a written determination to the Committees on Appropriations of the House of Representatives and the Senate that compliance would be detrimental to United States national security interests.

SEC. 8092. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4¼ inches in diameter and under manufactured outside the United States.

SEC. 8093. Beginning on October 1, 1988, and ending on July 1, 1989, none of the funds in this Act may be used by the Secretary of Defense or the Secretaries of the military departments to enter into any agreement or contract to convert a heating facility at a military installation outside the United States to district heating, direct natural gas, or other sources of fuel.

SEC. 8094. During the current fiscal year, notwithstanding any other provision of law, the Department of Defense shall exclude from diagnosis related groups regulations: (a) inpatient hospital services in a hospital whose patients are predominantly under 18 years of age and (b) such services in any hospital with respect to (1) discharges involving newborns and infants who are less than 29 days old upon admission (other than discharges classified to diagnosis related group 391), (2) discharges involving pediatric bone marrow transplants, (3) discharges involving children who have been determined to be HIV seropositive, and (4) discharges involving pediatric cystic fibrosis: *Provided,* That the Department of Defense shall ensure that beneficiaries not be required to pay more in cost-shares under the foregoing exclusions than those which would have been imposed if the diagnosis related group system had been instituted: *Provided further,* That notwithstanding any other provision of law, appropriations available to the Department of Defense may be used to pay the difference between the cost-shares paid by beneficiaries under the foregoing and the billed charges for services covered by this provision.

SEC. 8095. None of the funds in this Act or any other funds available to commissaries and exchanges may be used to purchase or sell any Toshiba products in those commissaries or exchanges.

SEC. 8096. Notwithstanding any other provision of law, the Secretary of the Air Force shall, from existing or prior year funds, make available $18,000,000 for the next generation trainer engine (F-109) over the next three-year period.

(TRANSFER OF FUNDS)

SEC. 8097. Notwithstanding any other provision of law, the Department of Defense may transfer prior year unobligated balances and funds appropriated in this Act to the operation and maintenance appropriations of the reserve components for the purpose of providing military technician pay the same exemption from sequestration set forth in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) as that granted the other military personnel accounts: *Provided,* That any transfer made pursuant to any use of the authority provided by this provision shall be limited so that the amounts reprogrammed to the operation and maintenance appropriations of the reserve components do not exceed the amounts sequestered under the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119): *Provided further,* That the authority to make transfers pursuant to this section is in addition to the authority to make transfers under other provisions of this Act: *Provided further,* That the Secretary of Defense may proceed with such transfer after notifying the Appropriations Committees of the House of Representatives and the Senate twenty legislative days before any such transfer of funds under this provision and if no objection is expressed within that twenty legislative day period.

SEC. 8098. None of the funds available to the Department of the Navy may be used to enter into any contract for the overhaul, repair, or maintenance of any naval vessel on the West Coast of the United States which includes charges for interport differential as an evaluation factor for award.

SEC. 8099. No naval vessel or any vessel owned and operated by the Department of Defense homeported in the United States may be overhauled, repaired, or maintained in a foreign owned and operated shipyard located outside of the United States, except for voyage repairs.

SEC. 8100. None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States Government may be obligated or expended during fiscal year 1989 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 104 of the Intelligence Authorization Act (H.R. 4387) for fiscal year 1989.

SEC. 8101. During the current fiscal year and hereafter, appropriations available to the Department of Defense for operation and maintenance shall be available for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including claims for damages arising under training contracts with carriers, and repayment of amounts determined by the Secretary concerned, or officers designated by him, to have been erroneously collected from military and civilian personnel of the Department of Defense, or from States, territories, or the District of Columbia, or members of the National Guard units thereof.

SEC. 8102. None of the funds provided in this Act may be obligated or expended for the procurement of LANDSAT or SPOT remote sensing data except by the Defense Mapping Agency, in its role as primary action office for such purchases by Department of Defense agencies and military departments.

SEC. 8103. None of the funds appropriated or made available by this Act may be obligated for any procurement or product improvement of the M30 (4.2 inch) heavy mortar, or for development or product improvement of 4.2 inch mortar ammunition.

SEC. 8104. None of the funds appropriated by this Act may be obligated or expended after January 1, 1989 on contracts with the prime manufacturers of the Advanced Tactical Aircraft which do not require that all

variants of the aircraft's design incorporate Joint Integrated Avionics Working Group standard avionics specifications no later than the time scheduled for the first production of the Air Force variant of the aircraft.

SEC. 8105. Of the funds appropriated in fiscal year 1988 to the Navy for Project 7000, $7,000,000 shall be provided to the Air Force for Project Have Gaze.

SEC. 8106. Of the funds appropriated by this Act, $65,000,000 are available only for engineering development of Joint Integrated Avionics Working Group standard avionics modules and supporting advanced avionics architecture elements, and of this amount $40,000,000 is available only for the Integrated Communications Navigation Identification Avionics (ICNIA) Program.

SEC. 8107. (a) None of the funds appropriated or made available by this Act shall be expended to award a contract pursuant to a solicitation issued on or after the date of the enactment of this Act under the Department of Defense overseas fuel procurement programs, including procurements in American Samoa and Guam, to a contractor other than a United States firm: *Provided*, That the foregoing limitation shall not apply unless the United States firm—

(1) has a crude oil refining capacity of not more than 85,000 barrels a day;

(2) participates in the Department of Defense overseas fuel procurement program;

(3) agrees to the contract on the terms proposed by the foreign firm to which the contract would otherwise be awarded; and

(4) does not use processing agreements in order to fulfill the contract, although exchange agreements are specifically permitted.

(b) This provision shall not apply if the total cost of supplies offered by the United States firm, including transportation as specified in the solicitation, would exceed the total evaluated cost to the Government if the contract were awarded to the foreign firm.

(c) This provision shall not supercede any status of forces agreement and shall not apply to acquisitions subject to the Agreement on Government Procurement of 1979 and the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582) and including acquisitions from countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et seq.).

(d) For the purpose of this section, the term "United States firm" means a corporation, partnership, association, joint stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

Mr. CHAPPELL (during the reading). Mr. Chairman, I ask unanimous consent that title VIII be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The CHAIRMAN pro tempore. Are there any points of order against title VIII?

POINT OF ORDER

Mr. FORD of Michigan. Mr. Chairman, I raise a point of order against section 8090 of the bill.

The CHAIRMAN. The gentleman will state his point of order.

Mr. CHAPPELL. Mr. Chairman, I am prepared to concede that the gentleman is correct and that his point of order is well taken.

The CHAIRMAN pro tempore (Mr. GRAY of Illinois). The point of order is conceded.

The point of order is sustained under clause 2, rule XXI, and the section is stricken.

Are there other points of order against title VIII?

If not, are there any amendments to title VIII?

AMENDMENT OFFERED BY MR. ROTH

Mr. ROTH. Mr. Chairman, I offer an amendment:

The Clerk read as follows:

Amendment offered by Mr. ROTH: Page 84, after line 12, insert the following new section:

SEC. 8108. Not later than December 31, 1988, the Secretary of Defense shall submit to Congress a report on the causes and circumstances of all deaths of Navy personnel during Navy training since January 1, 1986, and on the actions taken by the Secretary of Defense and the Secretary of the Navy to prevent further such deaths.

Mr. CHAPPELL. Mr. Chairman, will the gentleman yield?

Mr. ROTH. I am happy to yield to the gentleman from Florida.

Mr. CHAPPELL. Mr. Chairman, we are familiar with the amendment and we have no objection to it on this side.

Mr. McDADE. Mr. Chairman, will the gentleman yield?

Mr. ROTH. I am happy to yield to the gentleman from Pennsylvania.

Mr. McDADE. Mr. Chairman, the gentleman from Wisconsin has very thoughtfully given us a copy of his amendment and we are prepared to accept it.

Mr. ROTH. I thank both the gentleman from Florida [Mr. CHAPPELL], the very able chairman of the subcommittee, and the gentleman from Pennsylvania [Mr. McDADE], the very able ranking member, for supporting this amendment. I also want to thank the Rules Committee for making it procedurally possible for me to present the amendment.

Mr. Chairman, this is a very straightforward amendment. When I began to investigate the death of a 19-year-old Navy recruit who died in a swimming pool with four instructors present, while his classmates were told to face the wall and sing the National Anthem, I began to question the Navy's training. I also found out that within the past 30 months there were 17 other deaths in Navy training programs. That is one death in every 8 weeks, and that is in the training, not in operations.

This amendment asks the Secretary of Defense by this year's end to report the causes and the circumstances of these deaths. The Secretary also is to tell us how we are going to work to prevent further deaths like these.

The genesis of this amendment is the death of Lee Mirecki on March 2 who, as I have mentioned, died with four instructors in the pool. The Navy said that initially it was of natural causes, although he was 19 years old and in excellent physical health.

The Navy version was not substantiated by his classmates who began to tell the family to question the official story. That is when the family asked me to find out the truth. In the process of looking at the facts I found out that the Navy was applying foot-dragging and obfuscation, hoping that this case would fade away like so many others.

I am asking my colleagues today not to let this case and the others fade away. Lee Mirecki's death came of a heart attack, yes, but with three instructors watching the fourth one hold him down. We know now that there is a common practice called smurfing, which means taking people underwater, and holding them under to the point of asphyxiation. The name smurfing is after the cartoon character that we all know from our kids watching TV, the "Blue Smurfs," the same color the recruits turn after they hold them under water a certain length of time.

The family was concerned, and I was too, about the insensitivity of the Navy who even sent one of these instructors back with the funeral party to tell the family that he died of natural causes.

On June 2 the Secretary of the Navy, after repeated requests from me, sent an admiral in charge of training to my office, and he told me that there had been 17 deaths in 30 months, yet he provided no information or hint of information that anything was wrong.

In this legislation we are paying for the training these young people are going through.

There have been two reports on the Mirecki death, and none have been released. Why? Lee Mirecki died over 3½ months ago.

A couple of hours before this amendment came up, the Navy came to my office and gave me the barest reasons for the 17 deaths, and the time and place. I want to share something with the Members of this House. In every day terminology we refer to it as heart attack. Here in this letter there are 17 deaths, heart attack, heart attack, heart disease, heart attack, heart attack, possible heart attack. These people are 19, 20 years old, at the heights of their physical fitness, and they are all dying of heart attack. I do

not buy it, and I do not think other Members do either.

The CHAIRMAN pro tempore. The time of the gentleman from Wisconsin [Mr. ROTH] has expired.

(By unanimous consent, Mr. ROTH was allowed to proceed for 4 additional minutes.)

Mr. ROTH. Mr. Chairman, this Congress, the Members and I have an obligation to the American people which we represent to perform some oversight. Lee Mirecki should not have died, and I think there are others who should not have died either. I have had literally hundreds of telephone calls, letters, and reports from all over the country of people saying, "when my son died I was told it was a heart attack. Maybe I should have checked into it also."

We are funding the training under this legislation, in the bill before us, and I want my colleagues to join me in having the Secretary of Defense and the Secretary of the Navy come before this Congress before year's end and give an explanation of these deaths and why they occurred. That is why I am asking my colleagues today to join me. We are not prejudging the Navy. We are giving them an opportunity to explain their actions. The senior command should give us an explanation. They owe to the Members and the American people an explanation of how they are going to improve safety, how they are going to prevent needless deaths, and we are going to tell the American people the truth. This Congress cannot stand for anything less.

This House has to stand behind the principle that our military must provide the truth to the American people. We must reestablish trust and confidence in our Armed Forces so that the American family, the spouse, the parent, the son, the daughter, when they are told that a loved one has died in the service of his country, whether it be in training or operations, that that family is told the truth, the full truth, and nothing but the truth. The American people deserve the truth, and it is our responsibility to ensure that they obtain the truth.

The people I represent are no different from the people my colleagues represent. They are hard working, they pay their taxes, they are loyal Americans. When the Armed Forces of their Government tells them that their son or daughter died, they should be told the truth. They have a right to know the truth, and that is what I want my colleagues and the Congress to do, to join me today to pass this amendment that says that when word comes, should it ever come to a family, that that family in their heart and in their mind can say "my Government would not lie to me, the Armed Forces of my country would not deceive me."

If we pass this amendment, that is what we are going to do.

Mr. GONZALEZ. Mr. Chairman, will the gentleman yield?

Mr. ROTH. I am happy to yield to my friend, the gentleman from Texas.

Mr. GONZALEZ. Mr. Chairman, I thank my distinguished colleague and I rise in support of his amendment, and also to compliment him and advise that right now I have a case right in point where a family came to me. I made inquiries and never got the answers.

Finally I got an autopsy report, but the family had the body exhumed and had the local autopsy official perform an autopsy, which was contradictory to everything the service autopsy had said.

So I really compliment the gentleman and salute him for this. I think the least we, the Members of Congress, ought to have is some truthful answers when we make inquiries of the various Departments of Defense.

Mr. ROTH. I thank the gentleman from Texas for his contribution. I agree. I think that we in this Congress have let this go on all too often and all too long, and it is time we asked for an accounting.

That we have six young men in the height of their physical fitness drop over dead of heart attack is too much for me to swallow and I hope it is too much for the Members to swallow also.

□ 1505

The CHAIRMAN pro tempore (Mr. GRAY of Illinois). The question is on the amendment offered by the gentleman from Wisconsin [Mr. ROTH].

The amendment was agreed to.

Mr. PORTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise today to commend BILL CHAPPELL, JOE MCDADE, and the rest of the Defense Appropriations Subcommittee for bringing to the floor a bill which deserves the support of all Members. I would like to single out one portion of the bill which I believe warrants special attention.

The subcommittee has included a total of $410 million, designed to augment the Transportation Subcommittee's Coast Guard funding; $350 million of this amount is for acquisition, construction, and improvements, while the other $60 million will be transferred from the Navy to the Coast Guard's operating expenses account. These moneys are essential if the Coast Guard is to effectively carry out the expanding missions Congress has given it over the last decade.

Most importantly, the $60 million Navy transfer, when combined with the amount appropriated earlier by the Transportation Subcommittee, will bring the Coast Guard's operating expenses account to just $14 million under the service's request. I believe this level of funding will enable Admiral Yost to maintain the Coast Guard's essential helicopter air rescue stations throughout the United States, including Air Station Chicago, which, over the last 7 years, has saved over 150 lives.

At the same time, Mr. Chairman, I must express my concern over the way Congress continues to fund the Coast Guard. Over the last 8 fiscal years, $1.4 billion has been provided in the bill for support of the Coast Guard. Most of that money has been for procurement. Unfortunately, during 4 of those years, the moneys to operate the new boats, planes, and helicopters were cut. By funding the Coast Guard through two different functions in the budget we risk letting the service get caught in the switch at the end of the year. Specifically, my concern is that, in October, after the Transportation Subcommittee's conference closes, there is no guarantee that defense will include the money it was assumed they would provide. Without the $350 million included in the defense bill for Coast Guard procurement, the Transportation Subcommittee level will only provide $102 million, more than $246 million less than the fiscal year 1988 level.

If that happened, the Coast Guard would be forced to dip into its operating account, thus diminishing the good work the Transporation Subcommittee has done in that area. I believe it would be more prudent to provide all Coast Guard funding in one bill. Only then could we ensure coordinated funding levels and a responsible acquisition policy.

I realize, however, that these kinds of changes are not going to happen this year, and I am pleased that this subcommittee has done its part to ensure that the Coast Guard has the necessary funds to maintain its lifesaving missions. I urge Members to support the subcommittee's work.

AMENDMENT OFFERED BY MR. WALKER

Mr. WALKER. Mr. Chairman, I offer an amendment made in order under the rule.

The Clerk read as follows:

Amendment offered by Mr. WALKER: On page 84, after line 12 insert the following new section:

SEC. 8108. No funds appropriated under this Act shall be expended in any workplace that is not free of illegal use or possession of controlled substances which is made known to the federal entity or official to which funds are appropriated under this Act. Pursuant to this section an applicant for funds to be appropriated under this Act shall be ineligible to receive such funds if such applicant fails to include in its application an assurance that it has, and will administer in good faith, a policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances by its employees.

Mr. WALKER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be consid-

ered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. WALKER. Mr. Chairman, this is the drug-free workplace amendment that has been offered on several occasions here on the floor.

Mr. CHAPPELL. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I would be very happy to yield to the gentleman from Florida.

Mr. CHAPPELL. I thank the gentleman for yielding.

Mr. Chairman, we have no objection to the amendment.

Mr. WALKER. I thank the gentleman.

Mr. McDADE. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I would be happy to yield to the gentleman from Pennsylvania.

Mr. McDADE. I thank the gentleman for yielding.

Mr. Chairman, the gentleman has been very kind in acquainting us with the amendment and we have no objection on this side of the aisle and we are pleased to accept it.

Mr. WALKER. I thank the gentleman. I appreciate the support of both of these gentlemen for this amendment. As both of them know, the Secretary of Defense recently indicated that he was very much in favor of this kind of an approach and it is in the best interests of the Nation to move toward making our defense contractors move toward a drug-free workplace. So I am hopeful as we proceed through that we will be able to retain this language so that the Secretary of Defense is given that kind of authority.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. WALKER].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. TALLON

Mr. TALLON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TALLON: Page 84, after line 12, insert the following new section:

SEC. 8108. None of the funds appropriated by this Act may be used to enter into a contract for the procurement of rations known as Meal, Ready-to-Eat combat rations on a basis other than the total system acquisition approach under which the prime contractor is responsible for the acquisition, management, and final assembly of all component items which comprise the deliveries ration assembly.

Mr. TALLON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

Mr. McDADE. Mr. Chairman, I reserve a point of order against the amendment.

Mr. TALLON. Mr. Chairman, I would like to engage the distinguished chairman, the gentleman from Florida [Mr. CHAPPELL] in a colloquy.

Mr. Chairman, my amendment would save between $10 and $15 million a year by making a simple change in the current Defense Department procurement system for combat rations.

Under the current modified systems approach, DOD contractors are responsible for packaging these means as well as providing only some of the components of the meal package. The remaining components are supplied by the Government.

My amendment would require DOD to use the total systems approach to acquire these rations. Under the total systems approach, prime contractors would be responsible for acquiring all of the components.

Substantial Government savings would be realized by: First, eliminating premature Government payments; second, eliminating inefficiencies in assembly; and third, reducing DOD and contractor overhead costs.

GAO has recently reported that in many instances DOD materials could be acquired by DOD at substantially less expense if prime contractors were allowed to directly procure the material.

The acquisition of combat meals is one such instance where a significant savings could be realized under a total systems approach.

In 1987, one of the three prime contractors for these rations received $1,880,000 in excessive Government furnished materials. My amendment would eliminate this inefficiency.

The Senate has already recognized this problem and has taken steps to correct it. Today, the Senate Appropriations Subcommittee on Defense included language in its appropriations bill requesting that a test be conducted by DOD comparing the present system to a total systems approach.

Mr. CHAPPELL. Mr. Chairman, will the gentleman yield?

Mr. TALLON. I yield to the distinguished subcommittee chairman.

Mr. CHAPPELL. I thank the gentleman for yielding.

Mr. CHAIRMAN, I understand the concern of the gentleman and all of us are duty-bound to do everything we can to save taxpayers money. However, I am unsure what impact this amendment will have on the Department of Defense, on other MRE contractors and subcontractors, and on competition. In view of the fact that we did not have an opportunity to hold hearings on this matter and since the Senate has included report language on this subject, it will be an item in conference, I would suggest to the gentleman that we can more appropriately handle it in conference than we might at this particular time.

Mr. TALLON. Mr. Chairman, I certainly want to thank the gentleman and commend him and the gentleman from Pennsylvania [Mr. McDADE] for the outstanding job they have done putting this bill together. I appreciate their concern and attention to this matter. Recognizing that an objective test of this approach will be conducted in the next year and recognizing that this is the first time this issue has been brought before the House, Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

Mr. MILLER of Ohio. Mr. Chairman, I rise in support of the legislation.

Mr. Chairman, it's been several years since this bill has been before the House. For having achieved this great feat, I think the chairman and the gentleman from Pennsylvania are to be congratulated. Although I have some specific concerns, on balance this is a good bill. I also want to personally thank our subcommittee staff. As usual, they have done an outstanding job with what is typically one of the most difficult bills in the Congress.

The committee has given priority to personnel and readiness accounts in recognition of the lessons learned from the 1970's. Contained in this measure is a 4-percent pay raise for the active duty personnel. Significantly, of the $282.6 billion provided in this bill, we will be spending over $164 billion on operations and maintenance and personnel. While $164 billion is a considerable amount of money, it is barely enough to sustain the current level of readiness, as well as retain and recruit the high quality personnel in service today. We cannot afford to give up the gains we've made in these areas.

Specific concerns of mine pertain to the cuts sustained by SDI and MX rail garrison. I am hopeful, however, that some funding will be restored in conference for these vital programs. Another significant problem is the growing practice of using Defense appropriations to partially fund Coast Guard operations, which are properly funded under the transportation appropriations measure.

For fiscal year 1989, we will be transferring $410 million from the Pentagon to the Coast Guard. Don't get me wrong, I support the Coast Guard, and I'm a fervent supporter of the war on drugs. But, this funding should be provided from within the domestic discretionary portion of the budget.

More disturbing than any single item, though, is the present trend in Defense spending. This bill represents the fourth year in a row in which Defense will experience negative real growth. Obviously, this cannot con-

tinue without causing fundamental changes in national security planning, strategy, and commitments.

Despite the concerns I have, I intend to vote for this bill. It is a reflection not only of our defense needs, but also the political and budget realities of this body. I urge my colleagues to support H.R. 4781.

The CHAIRMAN pro tempore. Are there further amendments to title VIII?

The Clerk will read.

The Clerk read as follows:

This Act may be cited as the "Department of Defense Appropriations Act, 1989".

Mr. CHAPPELL. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. BARNARD] having assumed the chair, Mr. GRAY of Illinois, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4781) making appropriations for the Department of Defense for the fiscal year ending September 30, 1989, and for other purposes, had directed him to report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DICKS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 360, nays 53, not voting 19, as follows:

[Roll No. 193]

YEAS—360

Akaka	Edwards (CA)	Lent
Alexander	Emerson	Levin (MI)
Anderson	English	Levine (CA)
Andrews	Erdreich	Lewis (CA)
Annunzio	Espy	Lewis (FL)
Anthony	Evans	Lipinski
Applegate	Fascell	Livingston
Archer	Fawell	Lloyd
Armey	Fazio	Lott
Aspin	Feighan	Lowery (CA)
Atkins	Fields	Lowry (WA)
AuCoin	Fish	Lujan
Baker	Flake	Luken, Thomas
Ballenger	Flippo	Lungren
Barnard	Foley	Mack
Bartlett	Ford (MI)	Madigan
Barton	Ford (TN)	Manton
Bateman	Frank	Marlenee
Bennett	Frost	Martin (IL)
Bentley	Gallegly	Martin (NY)
Bereuter	Gallo	Martinez
Berman	Gaydos	Matsui
Bevill	Gejdenson	Mavroules
Bilbray	Gekas	Mazzoli
Bilirakis	Gephardt	McCandless
Bliley	Gibbons	McCloskey
Boehlert	Gilman	McCollum
Boggs	Gingrich	McCurdy
Boland	Glickman	McDade
Bonior	Gonzalez	McEwen
Bonker	Goodling	McGrath
Borski	Gordon	McHugh
Bosco	Gradison	McMillan (NC)
Boucher	Grandy	McMillen (MD)
Brennan	Grant	Meyers
Brooks	Gray (IL)	Mfume
Broomfield	Gray (PA)	Michel
Brown (CA)	Green	Miller (OH)
Bruce	Guarini	Mineta
Bryant	Gunderson	Moakley
Buechner	Hall (OH)	Molinari
Bunning	Hall (TX)	Mollohan
Burton	Hamilton	Montgomery
Bustamante	Hammerschmidt	Moorhead
Byron	Hansen	Morella
Callahan	Harris	Morrison (CT)
Campbell	Hastert	Morrison (WA)
Cardin	Hatcher	Mrazek
Carper	Hayes (LA)	Murphy
Carr	Hefley	Murtha
Chandler	Hefner	Myers
Chapman	Hertel	Natcher
Chappell	Hiler	Neal
Cheney	Hochbrueckner	Nelson
Clarke	Holloway	Nichols
Clement	Hopkins	Nielson
Clinger	Horton	Nowak
Coats	Houghton	Oakar
Coble	Hoyer	Olin
Coelho	Hubbard	Ortiz
Coleman (MO)	Hughes	Owens (UT)
Coleman (TX)	Hunter	Oxley
Conte	Hutto	Packard
Cooper	Hyde	Panetta
Coughlin	Inhofe	Parris
Courter	Ireland	Pashayan
Coyne	Jacobs	Patterson
Craig	Jeffords	Payne
Crane	Jenkins	Pease
Dannemeyer	Johnson (CT)	Penny
Darden	Johnson (SD)	Pepper
Daub	Jones (NC)	Perkins
Davis (IL)	Jontz	Pickett
Davis (MI)	Kanjorski	Pickle
de la Garza	Kaptur	Porter
DeLay	Kasich	Price
Derrick	Kemp	Pursell
DeWine	Kennedy	Quillen
Dickinson	Kennelly	Ravenel
Dicks	Kildee	Regula
Dingell	Kleczka	Rhodes
DioGuardi	Kolbe	Richardson
Donnelly	Kolter	Ridge
Dorgan (ND)	Konnyu	Rinaldo
Dornan (CA)	Kostmayer	Ritter
Dowdy	Kyl	Robinson
Downey	Lagomarsino	Rodino
Dreier	Lancaster	Roe
Durbin	Lantos	Rogers
Dwyer	Latta	Rose
Dyson	Leath (TX)	Rostenkowski
Early	Lehman (CA)	Roth
Eckart	Lehman (FL)	Roukema
Rowland (CT)	Smith, Robert (OR)	Udall
Rowland (GA)	Snowe	Upton
Russo	Solarz	Valentine
Sabo	Solomon	Vander Jagt
Saiki	Spratt	Vento
Sawyer	St Germain	Visclosky
Saxton	Staggers	Volkmer
Schneider	Stallings	Walgren
Schuette	Stangeland	Walker
Schulze	Stenholm	Watkins
Schumer	Stokes	Waxman
Sharp	Stratton	Weber
Shaw	Stump	Weldon
Shumway	Sundquist	Whittaker
Shuster	Sweeney	Whitten
Sikorski	Swift	Williams
Sisisky	Swindall	Wilson
Skaggs	Synar	Wise
Skeen	Tallon	Wolf
Skelton	Tauzin	Wolpe
Slattery	Taylor	Wortley
Slaughter (NY)	Thomas (CA)	Wyden
Slaughter (VA)	Thomas (GA)	Wylie
Smith (FL)	Torres	Yatron
Smith (IA)	Torricelli	Young (AK)
Smith (NE)	Traficant	Young (FL)
Smith (NJ)	Traxler	
Smith (TX)		

NAYS—53

Bates	LaFalce	Savage
Beilenson	Leach (IA)	Schaefer
Boxer	Leland	Scheuer
Brown (CO)	Lewis (GA)	Schroeder
Clay	Lightfoot	Sensenbrenner
Combest	Lukens, Donald	Shays
Conyers	Markey	Smith, Denny (OR)
Crockett	McCrery	Smith, Robert (NH)
DeFazio	Miller (CA)	Stark
Dellums	Nagle	Studds
Dymally	Oberstar	Tauke
Foglietta	Obey	Vucanovich
Frenzel	Owens (NY)	Weiss
Garcia	Pelosi	Wheat
Gregg	Petri	Yates
Hayes (IL)	Rahall	
Henry	Rangel	
Herger	Roberts	
Kastenmeier	Roybal	

NOT VOTING—19

Ackerman	Edwards (OK)	Miller (WA)
Badham	Florio	Moody
Biaggi	Hawkins	Ray
Boulter	Huckaby	Spence
Collins	Jones (TN)	Towns
Dixon	MacKay	
Duncan	Mica	

□ 1536

The Clerk announced the following pair:

On this vote:

Mr. Florio for, with Mr. Boulter against.

Ms. PELOSI and Messrs. WHEAT, SCHAEFER, FOGLIETTA, and LEWIS of Georgia changed their vote from "yea" to "nay".

Mr. BARTON of Texas and Mr. SIKORSKI changed their vote from "nay" to "yea".

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 4781, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1989

Mr. CHAPPELL. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill (H.R. 4781) making appropriations for the Depart-

ment of Defense for the fiscal year ending September 30, 1989, and for other purposes, the Clerk be authorized to correct section numbers, punctuation, cross references, and make other necessary technical adjustments.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Florida?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair will now put the question on the motion to suspend the rules on which further proceedings were postponed on Monday, June 20, 1988.

POSTAL REORGANIZATION ACT AMENDMENTS OF 1988

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4150, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. LELAND] that the House suspend the rules and pass the bill, H.R. 4150, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 390, nays 16, not voting 26, as follows:

[Roll No. 194]

YEAS—390

Akaka	Buechner	Dellums
Alexander	Bunning	Derrick
Anderson	Burton	DeWine
Andrews	Bustamante	Dickinson
Annunzio	Byron	Dicks
Anthony	Callahan	Dingell
Applegate	Campbell	DioGuardi
Archer	Cardin	Dorgan (ND)
Aspin	Carper	Dornan (CA)
Atkins	Carr	Dowdy
AuCoin	Chandler	Downey
Baker	Chapman	Dreier
Ballenger	Chappell	Durbin
Bartlett	Cheney	Dwyer
Bateman	Clarke	Dymally
Bates	Clay	Dyson
Beilenson	Clement	Early
Bennett	Clinger	Eckart
Bentley	Coats	Edwards (CA)
Bereuter	Coble	Emerson
Berman	Coelho	English
Bevill	Coleman (MO)	Erdreich
Bilbray	Coleman (TX)	Espy
Bilirakis	Combest	Evans
Bliley	Conte	Fascell
Boehlert	Conyers	Fawell
Boggs	Cooper	Fazio
Boland	Coughlin	Feighan
Bonior	Courter	Fields
Bonker	Coyne	Fish
Borski	Craig	Flake
Bosco	Crockett	Flippo
Boucher	Dannemeyer	Foglietta
Brennan	Darden	Foley
Brooks	Daub	Ford (MI)
Broomfield	Davis (IL)	Ford (TN)
Brown (CA)	Davis (MI)	Frank
Brown (CO)	de la Garza	Frost
Bruce	DeFazio	Gallegly
Bryant	DeLay	Gallo
Garcia	Madigan	Savage
Gaydos	Manton	Sawyer
Gejdenson	Markey	Saxton
Gekas	Marlenee	Schaefer
Gephardt	Martin (IL)	Scheuer
Gibbons	Martin (NY)	Schneider
Gilman	Martinez	Schroeder
Gingrich	Matsui	Schuette
Glickman	Mavroules	Schulze
Gonzalez	Mazzoli	Schumer
Goodling	McCandless	Sensenbrenner
Gordon	McCloskey	Sharp
Grandy	McCollum	Shaw
Grant	McCrery	Shays
Gray (IL)	McCurdy	Shumway
Gray (PA)	McDade	Shuster
Green	McEwen	Sikorski
Gregg	McGrath	Sisisky
Guarini	McHugh	Skaggs
Gunderson	McMillan (NC)	Skeen
Hall (OH)	McMillen (MD)	Skelton
Hall (TX)	Meyers	Slattery
Hamilton	Mfume	Slaughter (NY)
Hammerschmidt	Michel	Slaughter (VA)
Hansen	Miller (CA)	Smith (FL)
Harris	Miller (OH)	Smith (IA)
Hastert	Mineta	Smith (NE)
Hatcher	Moakley	Smith (NJ)
Hayes (IL)	Molinari	Smith (TX)
Hayes (LA)	Mollohan	Smith, Denny (OR)
Hefley	Montgomery	
Hefner	Moorhead	Smith, Robert (NH)
Henry	Morella	
Herger	Morrison (CT)	Smith, Robert (OR)
Hertel	Morrison (WA)	
Hiler	Mrazek	Snowe
Hochbrueckner	Murphy	Solarz
Holloway	Murtha	Solomon
Hopkins	Myers	Spratt
Horton	Nagle	St Germain
Houghton	Natcher	Staggers
Hoyer	Neal	Stallings
Hubbard	Nelson	Stangeland
Hughes	Nichols	Stark
Hunter	Nielson	Stokes
Hutto	Nowak	Stratton
Hyde	Oakar	Studds
Inhofe	Oberstar	Sundquist
Ireland	Olin	Sweeney
Jacobs	Ortiz	Swift
Jeffords	Owens (NY)	Swindall
Jenkins	Owens (UT)	Synar
Johnson (CT)	Oxley	Tallon
Johnson (SD)	Packard	Tauke
Jones (NC)	Parris	Tauzin
Jontz	Patterson	Taylor
Kanjorski	Payne	Thomas (CA)
Kaptur	Pease	Thomas (GA)
Kasich	Pelosi	Torres
Kastenmeier	Penny	Torricelli
Kemp	Pepper	Traficant
Kennedy	Perkins	Traxler
Kennelly	Petri	Udall
Kildee	Pickett	Upton
Kleczka	Porter	Valentine
Kolbe	Price	Vander Jagt
Kolter	Quillen	Vento
Kostmayer	Rahall	Visclosky
LaFalce	Rangel	Volkmer
Lagomarsino	Ravenel	Vucanovich
Lancaster	Regula	Walgren
Lantos	Rhodes	Walker
Leach (IA)	Richardson	Watkins
Lehman (CA)	Ridge	Waxman
Lehman (FL)	Rinaldo	Weber
Leland	Ritter	Weiss
Lent	Roberts	Weldon
Levin (MI)	Robinson	Wheat
Levine (CA)	Rodino	Whittaker
Lewis (FL)	Roe	Whitten
Lewis (GA)	Rogers	Williams
Lightfoot	Rose	Wilson
Lipinski	Rostenkowski	Wolf
Livingston	Roth	Wolpe
Lloyd	Roukema	Wortley
Lott	Rowland (CT)	Wyden
Lowry (WA)	Rowland (GA)	Wylie
Lujan	Roybal	Yates
Luken, Thomas	Russo	Yatron
Lukens, Donald	Sabo	Young (AK)
Mack	Saiki	Young (FL)

NAYS—16

Armey	Barton	Frenzel
Badham	Crane	Gradison
Kyl	Lungren	Stenholm
Latta	Obey	Stump
Lewis (CA)	Panetta	
Lowery (CA)	Pickle	

NOT VOTING—26

Ackerman	Edwards (OK)	Miller (WA)
Barnard	Florio	Moody
Biaggi	Hawkins	Pashayan
Boulter	Huckaby	Pursell
Boxer	Jones (TN)	Ray
Collins	Konnyu	Spence
Dixon	Leath (TX)	Towns
Donnelly	MacKay	Wise
Duncan	Mica	

□ 1556

The Clerk announced the following pair:

On this vote:

Mr. Barnard and Mr. Moody for, with Mr. Boulter against.

Mr. LOWERY of California changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1555

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3314

Mr. GOODLING. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 3314.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

UPDATE ON RICHARD P. CONLON

(Mr. LOWRY of Washington asked and was given permission to address the House for 1 minute.)

Mr. LOWRY of Washington. Mr. Speaker, as Members of the House are aware, on Sunday we had a terrible loss in that Dick Conlon, the executive director of the Democratic Study Group, died in a boating accident. There have been many inquiries to our offices because of the immense respect for Dick as to what plans for services may be in order.

I rise to tell the membership that at this time we still have not made any plans. We are awaiting the family's decisions on what they want to do.

The Coast Guard is at this moment aiding the Maryland authorities in searching for Dick and we will have new information on that at some time in the near future. I know the entire membership's thoughts and prayers go to his wife, Martie, and his children, Chuck and Mike and Kelly, and to their grandchildren. I know that everyone is going to be very interested in participating in the commemoration to this tremendous person. The Demo-

cratic Study Group staff is continuing at this time to do the work of the Democratic Study Group in providing the legislation information to the House.

There will be further information in the near future.

Mr. DYMALLY. Mr. Speaker, will the gentleman from Washington yield?

Mr. LOWRY of Washington. Mr. Speaker, I yield to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, to the family of Dick Conlon I express the sentiment of all the members of the Congressional Black Caucus in conveying our deep sympathy to his wife and his children and family. Indeed a tremendous loss has occurred not just for the Democratic Study Group members but for the entire Congress. He was a charming and enlightened and friendly and accessible person and we sorely will miss him. May God bless his soul.

Mr. LOWRY of Washington. Mr. Speaker, I thank the gentleman from California [Mr. DYMALLY], the chairman of the Congressional Black Caucus for his remarks. I know at a later time there will be extensive comments. I just wanted to bring the membership up to date. We have had a tremendous number of requests to our office because of the massive respect for Dick Conlon.

THE 50TH ANNIVERSARY OF JAVITS-WAGNER-O'DAY ACT

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate concurrent resolution (S. Con. Res. 121) to commemorate the 50th anniversary of the Javits-Wagner-O'Day Act, and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, I rise in support of this resolution.

I urge my colleagues to approve Senate Concurrent Resolution 121, a resolution commemorating the 50th anniversary of the Javits-Wagner-O'Day Act.

As a country, we have been able to make significant advances in the education, employment and training of the blind and the severely disabled because of the Javits-Wagner-O'Day Act. The programs under the act provide employment for over 4,500 blind individuals and 11,000 people with other severe disabilities in the manufacture of high-quality goods and services for purchase by the Federal Government. Through JWOD programs, blind and severely handicapped individuals have demonstrated their own abilities and independence, despite severe impairments.

I commend the sponsors of the House and Senate resolutions, Senator HARKIN and the gentleman from California, Mr. LANTOS, for their leadership in commemorating this important occasion.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 121

Whereas June 25, 1988, is the 50th anniversary of the enactment of the Act commonly known as the Javits-Wagner-O'Day Act, formerly known as the Wagner-O'Day Act, (52 Stat. 1196);

Whereas under the Javits-Wagner-O'Day Act, workshops currently provide employment in jobs of direct labor and ancillary support services throughout the United States to more than 4,500 blind and multihandicapped blind employees and vocational rehabilitation clients at 92 workshops and to over 11,000 persons with other severe handicaps at 254 workshops;

Whereas the Javits-Wagner-O'Day Act provides blind and severely handicapped individuals, and the workshops in which they work, with an opportunity to demonstrate their ability to provide quality commodities and services for purchase by the Federal Government;

Whereas Javits-Wagner-O'Day Act provides an opportunity for persons who are blind or who have other severe disabilities to demonstrate their capacity to lead productive and independent lives;

Whereas under the Javits-Wagner-O'Day Act workshops should, whenever feasible, continue to place their blind and other severely handicapped employees and vocational rehabilitation clients in competitive employment or in training for competitive employment and maintain an ongoing program to assist those employees and vocational rehabilitation clients who are capable of normal competitive employment to obtain jobs in the competitive labor market;

Whereas in addition to hiring persons for direct labor jobs, workshops in the Javits-Wagner-O'Day program should continue and expand their efforts to serve as models of affirmative action by hiring qualified blind and severely handicapped persons for all positions in the work force for which they are qualified, including management and supervisory positions;

Whereas the Committee for Purchase from the Blind and Other Severely Handicapped and any central nonprofit agency or agencies designated by the Committee under the Javits-Wagner-O'Day Act should also continue and expand their efforts to serve as models of affirmative action in hiring qualified blind and severely handicapped persons for all positions, including management and supervisory positions; and

Whereas the Congress reaffirms its support for the continuation and expansion of the Javits-Wagner-O'Day Act to provide improved work opportunities for blind and severely handicapped employees and vocational rehabilitation clients in all workshops: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the President of the United States is requested to issue a proclamation commemorating the 50th anniversary of the Javits-Wagner-O'Day Act, which occurs on June 25, 1988, and calling upon the people of the United States to observe the anniversary with appropriate ceremonies and activities designed to reaffirm the Act's historical objectives of providing opportunities for productivity and upward mobility to blind and severely handicapped employees.

The Senate concurrent resolution was concurred and a motion to reconsider was laid on the table.

NATIONAL SAFETY BELT USE WEEK

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 485) designating June 26 through July 2, 1988, as "National Safety Belt Use Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, the minority has no objection to this legislation.

Mr. DINGELL. Mr. Speaker, I wish to thank the distinguished chairman of the Subcommittee on Census and Population, MERVYN DYMALLY, for his leadership in bringing this resolution to the floor.

I rise today on behalf of House Joint Resolution 485, National Safety Belt Use Week. I wish to thank my colleague from Pennsylvania, the Honorable BUD SHUSTER for his support and efforts as an original cosponsor to this resolution. I am also pleased and proud of the overwhelming national support for this cause demonstrated by numerous endorsements from health-related organizations and by the over 250 cosponsors to this resolution.

I think we all agree that preventing needless death and injury on our Nation's roads is a worthwhile and commendable cause. The resolution requests the President to issue a proclamation. More importantly the resolution urges Americans to wear safety belts and to protect their children through the use of child safety seats. House Joint Resolution 485, together with the Senate resolution, will help to focus national attention on this valuable device and its lifesaving ability.

With over 205,000,000 Americans subject to safety belt use laws mandated by 32 States and the District of Columbia, the national effort to encourage Americans to buckle up is growing. The diverse and numerous consponsorships of this resolution clearly demonstrates the wide public and private support to encourage safety belt use. I will continue to work on behalf of this effort so that increasing numbers of Americans will be aware of the merits of safety belt use. I believe this resolution goes a long way in furthering that effort.

Mrs. MORELLA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the joint resolution as follows:

H.J. RES. 485

Whereas safety belts and child safety seats have proven to be effective in reducing highway fatalities and injuries;

Whereas the legislatures of 32 States and the District of Columbia have recognized the benefits of safety belt use and have enacted safety belt use laws;

Whereas these laws apply to nearly 205,000,000 persons;

Whereas child safety seat use laws are in effect in every State;

Whereas as a result of safety belt and child safety seat use laws and other activities, millions of Americans are regularly wearing safety belts and using child safety seats;

Whereas use of these safety systems by all drivers, passengers, and children would prevent thousands of fatalities and injuries each year;

Whereas use of safety belts and child safety seats should be encouraged even as passive restraint systems are phased into the vehicle fleet; and

Whereas numerous public interest and safety organizations are working to encourage more extensive use of safety belts and child safety seats: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That June 26 through July 2, 1988, is designated as "National Safety Belt Use Week", and the President is authorized and requested to issue a proclamation—

(1) to urge the people of the United States—

(A) to wear safety belts and to have their children wear safety belts, and

(B) to use child safety seats, and

(2) to encourage State and local governments, schools, health agencies, public safety and law enforcement agencies, motor vehicle manufacturers, the insurance industry, the military, media organizations, the business community, the entertainment industry, and other concerned organizations and officials to promote greater use of these essential safety devices.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution just passed and the Senate concurrent resolution that was concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

UPDATE ON HAITI

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

Mr. OWENS of New York. Mr. Speaker, the present upheaval in Haiti represents an opportunity. We should not make the mistake of believing that the present upheaval in Haiti is a fight between democratic forces on the one hand, and totalitarian forces on the other hand. This is a fight between thieves who have fallen out amongst themselves, between murderers responsible for the massacre of Haitian citizens going to vote on November 29, and drug lords who are very closely connected with the South American drug mob.

Haiti has become a major transshipment point for drugs and we must not forget that.

Mr. Speaker, the military coup that took place this week in Haiti leaves Lt. Gen. Henri Namphy in control. Haiti's former civilian president, Leslie Manigat, who became the president in phony elections in January, elections which were rigged by the military and fraught with voting irregularities, intimidation, et cetera, Mr. Manigat, who cooperated with the military and became their willing puppet, has now been thrown out of the country. He and his family fled to the Dominican Republic and they may seek asylum in Venezuela.

These events of the last few days highlight what I and numerous other observers of the Haitian political situation have been saying for several months. This is a falling out among thieves. There was no democratic force involved. However, there are democratic forces still present in Haiti. There are people who observe what is happening now and say that this is an opportunity for them. The so-called election of a civilian government had never placed any power in the hands of civilians. The true power in Haiti was always in the hands of the military.

Mr. Speaker, I submit for the RECORD an editorial which appeared in the New York Times entitled "In Haiti: No Democracy to Lose."

[From the New York Times, June 21, 1988]

IN HAITI: NO DEMOCRACY TO LOSE

(Entrenched dictator deposed. Fragile green shoots of democracy sprout up. But violence swamps free elections, leading a few months later to a military coup and a new dictator.)

On its face, the upheaval in Haiti sounds like another sad performance of a familiar Latin script. In fact, that stereotype may seriously misrepresent the power struggle going on in Haiti. The choice quite likely is not between soldiers and democrats, but between soldiers and soldiers who deal drugs.

The coup, by Gen. Henri Namphy, ended the four-and-a-half-month civilian Government of President Leslie Manigat. None of the main actors personify democratic values. But it is just possible that the much-abused cause of Haitian democracy might benefit from the coup. Washington can maximize that chance by keeping its support contingent on respect for clean democratic government.

General Namphy, waving a submachine gun and speaking mystically of unity between army and people, says he acted to protect the Constitution and halt a new personal dictatorship. "The future of democracy and liberty was at stake," he declared. Maybe, but any respect for the Constitution on his part would be new-found. More immediately at stake was his future and that of military and Duvalierist allies. Mr. Manigat last week overruled, then dismissed and finally arrested General Namphy.

Mr. Manigat asserted that he was the champion of civil authority and the Constitution. But Haitians remember how little respect he had for that Constitution when it was being traduced to assure his emergence as President. Nor has he reassured anyone by allying himself with Col. Jean-Claude Paul, whose troops participated in last year's Election Day carnage. More recently, the colonel was indicted in Miami on U.S. drug smuggling charges.

General Namphy has now installed an openly military Government, with himself as President. But the State Department may be premature in concluding that the U.S. goal of free elections has thereby been definitively set back.

One of General Namphy's grievances against Mr. Manigat was his failure to get Washington to resume aid cut off after the electoral violence. The loss of U.S. funds has hurt the economy and pressured public payrolls, including the military. The drug trafficking of which Colonel Paul is accused represents a potential alternative source of funds.

The coup, by regular army forces, has now apparently headed off the threat from this rival power center. But Haiti's new rulers still seek relief from the aid squeeze. Washington would be unwise to keep withholding aid while promising to renew it should they commit to genuine elections and distance themselves from drug dealing.

Mr. Manigat proved to be a hostage to the electoral travesty that installed him, and a stubborn protector of Colonel Paul as well. His military successors, essentially the same group that made a mess from 1986 to 1988, may be more inclined now to listen to positive advice. That's a small hope, but in poor Haiti, which lacks everything but violence, it's surely worth exploring.

Mr. Speaker, the editorial correctly notes that the power struggle over the weekend was a power struggle not between democrats and soldiers but between soldiers both factions of which are involved with drugs. A week ago, General Namphy tried to demote Col. Jean Claude Paul. Col. Jean Claude Paul is the chief of the drug traffickers. He is the chief drug lord. What happened really was the result of a policy that has been pursued by our Government as a result of the pressure that Congress has placed on the State Department and the administration. Congress has insisted that not a dime should flow to Haiti until Haiti has democratic elections and abides by its own constitution. As a result, we had a situation created where a crisis

in cash flow resulted. General Namphy had to observe that the only force in Haiti with money was Colonel Paul. Colonel Paul receives his funds of course from the South American drug lords. General Namphy attempted to move on Colonel Paul. He attempted to demote Colonel Paul for two reasons, because Colonel Paul's forces were growing more strongly than the rest of the military, and also because by attempting to demote Colonel Paul he was trying to send a phony signal to the United States that they were really concerned about drug trafficking and were going to move to do something about it and in response to that he hoped the United States would allow the dollars to begin to flow to support the payroll of the military again.

General Namphy's move backfired.

President Manigat at the request of Colonel Paul moved to protect Colonel Paul. In making such a move, I think President Manigat made it quite clear that his primary protector was Colonel Paul.

□ 1610

Colonel Paul, of course, was guilty of a triple-cross, because he double-crossed the President, and when the pressure was applied to him by Namphy's forces, Colonel Paul joined forces with Namphy, so the military, all the military guys, are together again, and Manigat is out of the country. It is just as well that this sham is ended.

As to what kind of rulers Namphy and his military henchmen will now become, we already know they were there before. This is the same kind of thugs responsible for the election day massacre in Haiti last November. They provided no protection for Haitians attempting to vote or for Haitians working with election officials. These are the same thugs who looked the other way as soldiers joined elements of the Tonton Macoute terrorists in murdering voters last November. These are the same thugs who rigged the January election for a phony civilian government.

These are the thugs who have been implicated in drug trafficking in conjunction with the South American drug mob. These are the thugs who have turned their country into a major cocaine transshipment point to distribute cocaine to other Caribbean nations and to Florida and other Southern States in our country.

The Reagan administration must take the lion's share of the blame for what has occurred in Haiti. The administration had a chance last year to assist efforts by human and democratic rights groups in Haiti by sending funds and materials aid to the provisional electoral council. That council was mandated by the Haitian Government and by the Haitian Constitution to conduct free elections last summer. Of course, the administration could have cut U.S. aid before the election, the first election, after Namphy and his thugs attempted to dissolve the electoral council and to run the election process themselves.

At each step of the way, the administration has allowed Namphy's government to take the upper hand, and it is time now for our administration to understand that we are in a position to pressure the existing military rulers of Haiti finally to have the free elections that they should have had long ago.

We deserve to assist the Haitian martyrs, at least to this degree.

COIN FRAUD PREVENTION ACT INTRODUCED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, I have been chairman of the Coinage Subcommittee for the past 9 years. During that time, I have seen many changes come to the hobby of coin collecting. What was once a hobby in which the opportunity for profit was secondary, has become for many people a means of investment.

Those seeking to invest are interested in earning a profit, and do not have either the time or the inclination to learn about coins. They have come to rely upon the honesty and good faith of dealers to treat them fairly and honestly. Most dealers are scrupulous. Unfortunately, the rising interest in coins as an investment has also seen a corresponding rise in the number of schemes designed to take advantage of those interested in investing in coins.

Some of these schemes involve selling duplicates of genuine U.S. coins at prices far in excess of the intrinsic value of the item. The advertising copy is cleverly written to imply a connection with the U.S. Government. Other ads offer genuine United States coins at greatly inflated prices and imply that the seller is somehow connected with the U.S. Government, or that the coins were obtained from the mint, or Treasury, or Government vaults. Still other frauds are more direct and involve misrepresenting the condition of the coins or that the seller guarantees to buy them back.

Over the years, I have referred numerous schemes and advertisements to the Postal Service, the Federal Trade Commission, and even the Secret Service, Nevertheless, the number of victims of coin frauds and deceptions continues to grow and the enforcement agencies seem unable to keep up. In addition, the tools in the agencies' enforcement arsenal are generally weak, cumbersome, and offer little deterrance to the actors and little relief to the victims.

Today I am introducing legislation to correct that inequity. The Coin Fraud Prevention Act is drafted to put an end to fraud and deception in coin sales and to provide a comprehensive arsenal of remedies for victims. It prohibits fraud and deception in the sale of coins, prohibits the manufacture and sale of duplicates of U.S. coins that are not premanently marked "COPY" and prohibits misrepresentations suggesting ties to the U.S. Government.

Too often, the perpetrators of coin-related fraud hide behind complicated corporate schemes to insulate themselves from personal liability. My legislation pierces the so-called corporate veil, and makes anyone who operates or controls a fraudulent coin operation personally liable for its deceptive acts. It creates a rebuttable presumption that an officer or director of a fraudulent coin operation has such control, and is personally liable for its deceptive acts. In addition, it makes such persons and corporations civilly liable to consumers, and provides for not only actual, but punitive damages and attorneys fees. It gives any interested party the right to seek injunctive relief, prohibiting deceptive practices. And it gives State attorneys general the right to seek monetary damages and injunctive relief on behalf of a State's citizens. In addition, the act gives the Federal Trade Commission enforcement authority. It also permits the Attorney General or the Postal Service to seek a forfeiture of all materials used in perpetrating the fraud and all the ill-gotten proceeds of the scheme. Finally, it imposes criminal liability for knowing and willful violations, with imprisonment of up to 1 year and hefty fines.

This legislation is designed to take the profit out of coin fraud. For too long, shady operators have cheated the public out of millions of dollars and gotten to laugh all the way to the bank.

The occasional consent decree they signed, or fine they paid, was simply part of the cost of doing business.Their misrepresentations have impugned the integrity of U.S. coinage, harmed the business of reputable coin dealers, and cheated consumers. As chairman of the Coinage Subcommittee, I will not stand by—I cannot stand by—and let that happen.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. MACKAY] is recognized for 5 minutes.

Mr. MACKAY. Mr. Speaker, due to a previous commitment I missed several votes. Had I been able to vote, I would have voted for approval of the Journal, for the rule on H.R. 4781, for final passage of H.R. 4781 and for final passage of H.R. 4150.

I appreciate having this opportunity to state my position on these measures.

CAN WE AFFORD SOUTH AFRICAN EMBARGO?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Idaho [Mr. CRAIG] is recognized for 60 minutes.

Mr. CRAIG. Mr. Speaker, tonight I have taken a special order to once again call attention to Congress' debate on sanctions on South Africa that are occurring now in this Congress before the appropriations committees during this election year. It is

interesting to note, as we proceed, that this debate over South African sanctions has also spread into the Presidential politics of the year.

I think all of us agree that apartheid should be eliminated, but that is where the consensus in Congress ends, as I think it does across the country. There are many differing views on the questions that remain, and those questions go in somewhat this order: How to eliminate apartheid, what role should the U.S. Government play, what role should Congress play, what risk do we run pursuing these different strategies.

This evening, Mr. Speaker, I would like to discuss at least one aspect of the apartheid debate and the sanctions debate and the kind of impact it potentially could have on the United States and the economy of this country.

As Members of Congress, we must be particularly concerned, in my opinion, about the impact of our actions on the national security of this country. That brings us to the issue on how to protect our country's access to strategic materials that we obtain from South Africa.

The new sanctions bill working its way through Congress is intended to stop all trade and investment in South Africa with the limited exceptions of strategic materials. I have said to eliminate all trade and investment in South Africa. What about the possibility of South Africa retaliating by cutting off access to some very critical strategic materials? Those who support additional sanctions on South Africa say we do not need to worry about retaliation, for two reasons: First, they say South Africa could not afford the embargo; and, second, they say even if South Africa were to embargo strategic materials, that the United States has sufficient reserves to withstand an embargo and will be able to supply the deficiencies through non-Soviet sources.

In response, let me say this is a mighty risky game of chicken that is proposed by those who use the two arguments that I have just put forward. It may be true that South Africa cannot afford an embargo. But can we afford a South African embargo?

According to recent press reports, and I refer to one, and there have been many others, that was mentioned in the Washington Post of May 5 of this year, a consideration by the Botha government that an alternative, or at least a retaliatory effort, if the U.S. Congress and our Government were to follow through with this talk of greater sanctions, would be that a direct embargo on this country of strategic materials and the kind of impact that it would have.

The South Africans know fair well that if they decided no longer to sell to this country strategic metals and materials that only they supply in some instances, that it would have a tremendous impact upon the economy of this country, and that we would in essence be shooting ourselves in our own foot by the kinds of retaliatory action or apartheid-type sanction that we are talking about at this moment.

What I would like to do now, Mr. Speaker, is run down through a study done by the Department of the Interior in 1988, an estimated direct impact of a United States import embargo on strategic and critical minerals produced in South Africa. In other words, Mr. Speaker, if one were to read this report and simply reverse it, because it is the Congress that says we will not impose such an embargo, but it is now South Africa that said, as a retaliation to our actions, that they could do so in strategic metals, I think here are some of the types of things that we would have to consider. What I will do is summarize the effects that the report mentions on embargo as addressed.

The direct economic cost to the United States resulting from the decision to embargo South African strategic and critical minerals imports is estimated in the study as a staggering figure of $1.85 billion a year. About 94 percent of these estimated costs come in two platinum-group metals, basically platinum and rhodium.

It is amazing to me to consider that the potential impact of an action that we could take here in Congress could have as much as a $1.85 billion reaction here in our country. There are sufficient alternative world sources to South Africa for manganese, for chromium, palladium, titanium, and vanadium, but to meet United States industrial demand, in the event of such an embargo, or from either side, but at an increased price and at an increase, of course, to our trade deficit.

Alternative world sources to South Africa for platium and rhodium, as I have mentioned, simply cannot be met to meet U.S. industrial demand here in this country; non-South African world supply sources can meet only 40 percent of the domestic platinum consumption requirements and about 50 percent of the rhodium requirements. As a result of an increase in prices of platinum and rhodium during an embargo, expansion of domestic platinum-group metals mining and secondary production would have to be expected. During a 5-year embargo, domestic primary and secondary production could be expected to expand for these, but only to meet about one-third of the U.S. requirements both in platinum and approximately one-third in the rhodium requirements, and approximately one-half in domestic palladium requirements.

□ 1620

What does all of this mean? Let me break it down a little further into the metals group, because I am probably talking about something that a lot of people do not understand, and until we deal with the products that we look at and see in our economy on a daily basis and begin to understand its overall importance do we begin to understand what the $1.85 billion impact upon our economy really means.

When I talk about chrome, what am I talking about? I am talking about a very critical and necessary ingredient in the production of stainless steel. It is a super alloy necessary for that production. Stainless steel, of course, we recognize. It is very vital in defense, aerospace, chemicals, power generation, the transportation industry, for protection against oxidation and corrosion, corrosion resistant materials.

The United States imports now approximately 79 percent of all of our need and that comes from South Africa. To have a full embargo in this particular necessary metal would cost the United States economy approximately $30 million a year.

Let us talk briefly about magnesium. Magnesium is essential in steel and cast iron production and 24 percent of our needs come from South Africa. An embargo would cost about $30 million a year on the economy.

The platinum group metals, and I mentioned some of those, platinum, vanadium, rhodium, all extremely critical to this country and especially in the production of catalytic converters that are now necessary for our cars and the control of pollution, automobile pollution. We also use these in the refinement of petroleum and fertilizer products, explosives and numerous other types of chemicals.

From 1983 to 1985, 53 percent of the United States' use of the platinum group metals came directly or indirectly from South Africa. Ten percent came from the Soviet Union.

There are alternatives, Mr. Speaker, but these alternatives would leave us sorely lacking the necessary quantities that we need. Platinum supplies from the Soviet Union could be increased from 3 to 30 percent and in rhodium from 33 to 63 percent. But the net impact, the potential net impact if these were embargo and could not flow from South Africa would be approximately $1.75 billion on the economy, and that is in direct costs. We are not talking of the human losses as it relates to jobs in our country.

Mr. BURTON of Indiana. Mr. Speaker, will the gentleman yield just a moment on that one point?

Mr. CRAIG. I am happy to yield to my colleague, the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Speaker, I had a gentleman who was a representative of a rhodium producing company in South Africa come to visit my office, and we got into an in-depth

discussion regarding catalytic converters and rhodium. He told me that if we boycotted, put an embargo on all rhodium that we now get from South Africa, that if we bought all of the rhodium supplies that are currently available in the rest of the world, we would not have enough rhodium to produce the catalytic converters that are necessary to meet environmental protection standards here in the United States.

What that simply means is that the air quality in the United States would go down drastically if we quit buying rhodium from South Africa. I think everybody in America who is concerned about the environment needs to be aware of that fact, that if we just stop this one strategic metal from getting to the United States, the environmental impact on the United States of America alone could be severe.

Mr. CRAIG. I thank my colleague from Indiana for bringing up that point. He is absolutely correct.

In the shift that we have seen in the economy already, and with that shift to the Soviet Union, the argument is that the Soviet Union can supply as an alternative source these metals that my colleague, the gentleman from Indiana [Mr. BURTON] is referring to.

So the Soviet Union has about 9.5 percent of the world's reserves in these particular platinum group metals. South Africa has 90 percent of the world's reserves. A mine in Montana could be expected to increase production, but nowhere could we meet the demand. And of course, as my colleague has mentioned, not only would there be a strong argument that we would lose jobs and production, but the quality of our air would go down as a result of this.

Let me hit a couple of other metals before I yield once again to my colleague who has led the debate as it relates to opposition to the sanctions that are occurring, or at least the discussions and the legislation that may occur as a result of the activities here in the House.

Vanadium is another metal that is very critical, again as an element in steel making for strengthening purposes, for abrasion resistance, for toughness in overall steel, and for use as an aircraft metal it is absolutely critical, in building of bridges, in all of these groups vanadium serves as a catalyst to be used to strengthen the overall metal produced.

Fifty percent of the United States use is imported; 76 percent of the imports come from South Africa. China could be an alternative supplier. Some could come from Finland and the Soviet Union, but the cost of an embargo is estimated at approximately $7 million a year.

I have cited a variety of examples of the kinds of critical and strategic materials and metals that now flow from South Africa that could have tremendous impact upon our economy. It is argued of course here that we ourselves would not boycott, but with the types of sanctions that are being talked about before the respective committees in the House, the South Africans have and continue to consider the possibility of carrying on their embargo or boycotting of exports to this country of these critical metals, and my colleagues can see the reason why. It would have phenomenal impact upon our economy.

Let me talk briefly about the kind of impact that has already occurred in South Africa as a result of the limited sanctions our country has already imposed upon that country, sanctions that were talked about earlier that this Congress acted on, but where there has been little attention given, even though it has had a tremendous impact upon our economy.

Over 170 United States companies have pulled out of South Africa since the sanctions of over a year and a half ago. United States imports from South Africa have dropped by approximately $1 billion. South Africa had to slash coal prices in order to maintain a market share, depressing the world prices of coal to such an extent that United States coal exporters lost over $250 million in 1986 and 1987 alone, according to a study by the Wharton Econometrics Group, and that means in other words that we have lost approximately 3,000 to 4,000, possibly as high as 5,000 jobs in our coal mining industry which can be attributed to that very action. That of course is according to our National Coal Association.

Even though importation of strategic materials is not forbidden, as we have already discussed, United States importers have shifted from South Africa to the U.S.S.R. as a substitute supplier for a number of materials. For example, let me run down a couple of these.

What we can demonstrate is that growing dependence on a country that I would suggest to every observer has little concern about our particular national defense, and certainly has little concern about our economy. United States imports of platinum from the U.S.S.R. have increased 73 percent since the sanctions were imposed, and my colleague who has joined with me tonight, the gentleman from Indiana [Mr. BURTON] and I have already discussed the kind of impact that that has upon our economy. United States imports of platinum bars from the U.S.S.R. have increased 321 percent since sanctions were imposed. Imports of chrome from the Soviet Union have increased 157 percent. United States imports of ferrous silicon from the Soviet Union have increased 333 percent. United States imports of rhodium from the Soviet Union have increased 386 percent. United States imports of antimony from the Soviet Union have increased 4,783 percent. United States imports of industrial diamonds from the Soviet Union have increased 4,900 percent.

South Africa's trade with the U.S.S.R. and Eastern bloc nations, interestingly enough, has also increased. In an effort to boycott, in an effort to restrict, in an effort to force the South African Government and economy to respond, we are in fact driving them into the arms of the Soviet Union. Let me give a couple of brief examples of what has happened.

A recent editorial in a Johannesburg paper reflected a trend in thinking among the South African business community. It said that the Soviet Union's approach to promoting peace in the region reflects greater insight than the politics of the West which are designed to break South Africa with sanctions and destabilize the continent. That article was reflecting on a greater sensivity and a greater trade with the Soviet Union and other Eastern bloc nations.

While all of that of course has been going on, thousands of black South Africans have been put out of work. In the May 1987 elections President Botha was returned to power with an increased majority, and the official parliamentary opposition changed from the Liberal Progressive Federal Party to, of course, the Right Wing Conservative Party.

So I would suggest that the sanctions that we have already imposed on South Africa, the results have been that we have driven them in the opposite direction than was intended to occur.

There are some who would support absolute and full sanctions, and frankly, in my discussions with them, they do not care what happens to the blacks of South Africa. More importantly, they do not care what happens to the working men and women of this country or what happens to the economy of this country.

The actions we take here in the coming months do reflect a very real importance to the strategic defense of this country, to the importance of our economy and to the job base that could strongly be affected, and the statistics I have produced tonight I think can demonstrate just exactly that.

While we can argue that it will do all of that, we have to argue, Is there a positive result in South Africa? Will it rid that nation of apartheid? Does it offer the black community of South Africa a greater opportunity for a direct involvement in that Government and in that economy? My answer to that is "No," it does not offer that result. In fact, it may offer the opposite result.

I yield to my colleague, the gentleman from Indiana [Mr. BURTON], who has been a champion for the whole of South Africa and in direct reaction to the kinds of actions that we have taken here. I would like to thank my colleague for joining me tonight in this special order.

Mr. BURTON of Indiana. I thank my colleague for taking this special order tonight.

In just a few short days we will be debating at some length the all inclusive South Africa sanction bill, and this new South Africa sanction bill is going to be much more onerous than the one that was passed 2 years ago which many of us opposed. We are all against apartheid, as my colleague has said in very clear terms. But we do not want to kill any hope of a democracy in South Africa because we are doing the wrong thing, and we certainly do not want to hurt the United States of America in the process.

The fact of the matter is that strategic minerals is not the only problem, although it is a very important one. If we embargo all products coming out of South Africa, and if we totally disinvest, the South African Government will still be able to sell 60 to 70 percent of their exports, because 60 to 70 percent of their exports are these vital minerals, and they only come from a few places in the world. So they are going to continue to be able to export. As a matter of fact, their balance of payments has improved over the past year, even though we imposed those sanctions.

The Dellums bill, in my view, will not bring down apartheid. It will only make South Africa's blacks weaker while increasing our, the United States' dependence on our chief adversary in the world, the Soviet Union. I find that very ironic, that the House of Representatives would consider a measure that in the name of human rights will increase our dependence on the chief violator of human rights in the world, the Soviet Union. It just does not make sense to me. We are trying to end a violation of human rights in the form of apartheid by creating a dependence on the Soviet Union, the greatest violator of human rights in the world. It just does not make sense.

I would like to bring to the attention of my colleagues who say it may hurt the blacks in South Africa but we are going to take the high moral ground, we are going to do what is right for mankind, we are going to end apartheid once and for all, testimony in one of our subcommittee hearings on South Africa by a man named James Negoya, who is the president of the South African Black Taxi Association. He listened with great interest to all of us who were talking about this issue, and he heard some of my colleagues say we are going to do what is morally correct, we are going to impose sanctions even though it will put 2 million blacks out of work by the year 2000 and put 10 million blacks to bed hungry in South Africa in that same timeframe.

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And here is what he said in answer to that, and this is a member of the South African-Black Taxi Owners Association. There are about 100,000 of them in that association. He is very concerned about the plight of blacks in South Africa, being one himself.

He has been one who has pulled himself up by the bootstraps in a very oppressive society and made something out of himself as have his contemporaries in this association.

Here is what he said, and I quote:

I sat in this room yesterday and heard people say that if sanctions make black people in Africa suffer more, that does not matter because they are suffering already and won't mind suffering some more. I even heard them say that whether more sanctions will help bring down apartheid doesn't matter, because imposing sanctions puts America on the right side of history. * * * Does that mean you really do not care what the black people of South Africa want? * * * I ask you to listen to our voices * * * before you decide what is good for us. Before you decide that black children must go hungry so you can be on the right side of history.

This is not my quote, this is a quote of a black from South Africa, testifying in the House Subcommittee on Africa.

And if you look at the polls you will find in poll after poll every black in South Africa is against apartheid, almost without exception, but about 75 percent are opposed to sanctions that will do away with their jobs. They are against sanctions that would put them out of work and put their children to bed hungry.

You know what really bothers me, my colleague from Idaho, is that while we are worrying about South Africa—and it is something that we should be concerned about because apartheid is something that is repugnant to all of us—we are not paying much attention to what is going on farther north or the continent, in Ethiopia. Right now Colonel Menjistu who has been in power up there for 14 years is systematically killing between 1 and 3 million people by starvation.

The United States of America, our Government, many church organizations and other philanthropic organizations have been sending food to Ethiopia to help the starving masses. And while we send that food over there and the trucks to deliver them—and, incidentally, it is kind of interesting that they at one time were charging us $50 per ton to unload our food that we are giving to their people, the starving masses over there and have charged us thousands of dollars to give them the trucks with which to deliver the food. And after we have done all that, they are effectively blocking that food and the International Committee of the Red Cross from getting that food into Eritrea and Tigre Provinces in northern Ethiopia because they want to starve those people to death and win that civil war. They are starving human beings to win a war. They are deliberately starving innocent women, children, and men to death to do it.

You know, we in the world were very upset when Adolf Hitler killed 6 million Jews in the gas chambers. We look upon that as a blot on history that nobody should ever forget. Yet right now we estimate that between 1 and 3 million people are going to be starved to death in Ethiopia and nobody is saying anything about it—at least very few are. And at the other end of the continent we have seen 150 to 200, 300 people killed in racial violence as a result of apartheid and the whole world is indignant about it. We should be indignant about apartheid, but we should be even more indignant about what is going on in Ethiopia where blacks are murdering blacks by the hundreds of thousands and millions. Yet this body is taking no positive action to deal with Mr. Menjistu and it certainly should.

Now I would just like to say that I think it is important that we listen to some of the leading personalities who have been involved in the apartheid issue, particularly those from South Africa. One of the people who has been a leader of the struggle against apartheid for the past 20 years in South Africa is a lady named Helen Suzman. The Washington Post, in a lead editorial on June 15 quoted Mrs. Suzman:

Noting the crucial role an expanding economy plays in black empowerment, she declares "It is surely senseless to blunt by sanctions the only weapon with which blacks can improve their position at the workplace." Precisely this notion of giving blacks an economic base from which they can, if they wish, withhold their own labor and purchasing power stirs the strike movement that is becoming an increasingly important arena of black struggle.

The Post editorial continued:

We do not think any new sanctions are justified while such doubt exists about whether the old ones were wise.

In an op-ed piece in the Post, Helen Suzman wrote:

Restriction of the economy through sanctions must inevitably result in a decrease in the demand for labor and widespread unemployment. Why then are sanctions and disinvestment advocated by people who are working for black advancement, thereby undermining the major power base that blacks can obtain.

Then here in this country just this past week William Raspberry, one of the most noted columnists in the

country regarding the plight of blacks here and around the world, wrote this, and it was about the bill which I am offering as a substitute to the Dellums-Wolpe sanctions bill which will be coming to the floor in the next few weeks.

I quote Mr. Raspberry from an article of June 16, 1988:

What is clear is that if weakening of the South African economy is the way to fight apartheid, South Africa's blacks could do it more directly—and much more quickly—by staging a general strike. South Africa's economy relies heavily on blacks, both as workers and as consumers.

Sanctions, says Burton, would undercut the strike as an important weapon against apartheid. Black unemployment, he says, reduced the ability of blacks to fight apartheid. So what would he propose? His answer is contained in the substitute bill that would authorize housing loan guarantees for disadvantaged South Africans and provide for major new expansions of economic, educational and legal assistance and housing opportunities for South African blacks.

Therein, as Shakespeare says, lies the rub. Are we going to go on with more sanctions that are going to put 2 million blacks out of work by the year 2000, put 10 million blacks to bed hungry, cut off strategic minerals that we need for our economic health and our national defense security? or are we going to do what is the right thing to do, and that is help the blacks end apartheid in South Africa by creating economic power which will translate into political power.

If you create more black jobs, more buying power for blacks, if you create more black housing, if you create more black entrepreneurs, if you put 15 percent of the salaries that are being paid blacks by American companies in South Africa into an educational and development fund, thus increasing their educational level over there, you are going to help fight apartheid from within. Apartheid will never be destroyed from the outside. We here in the United States who believe we are omnipotent, that we have all this Godlike power, are making a terrible mistake if we think that by pulling out we are going to end apartheid. It is going to be just the opposite. We are going to solidify those forces of apartheid in South Africa and we are going to hurt the very people we want to help.

We should be doing what we suggest in this substitute, create black empowerment economically which will translate into political power and we can stay in there and help, through American involvement, through American business, through American Government contacts with their people, in the black townships, the black leaders, we can bring about a positive conclusion to the apartheid problem.

I want to say to my colleague once again from Idaho I really appreciate his taking time out from his busy schedule to address this issue tonight. I know the gentleman is not on the Committee on Foreign Affairs and he does not have any reason to be directly involved in this. That is why you deserve a double pat on the back for taking the time to address this issue tonight.

Mr. CRAIG. I thank my colleague from Indiana, Congressman BURTON, for the leadership he has played on this very important issue. I think the points he has made, the way he improves the plight of the blacks in South Africa is an uplifting approach. The gentleman does not ultimately put them down and run them into the ghettos that are created by such a thing. But in fact he creates jobs and an environment in which they can become the economic force and we all know that the economic force of the nation is the force that dictates often times the politics of a nation.

I yield further to the gentleman from Indiana.

Mr. BURTON of Indiana. I thank the gentleman for yielding further and would like to say that I think that the points that the gentleman has made regarding these minerals is so important. The thing about it that is interesting is that they are going to sell them anyway; the gold, diamonds, platinum, rhodium, all those things are needed around the world. It is estimated 60 to 70 percent of their exports will go through anyhow.

So we are really not going to achieve what we want to by imposing sanctions on those people there. The other thing that is interesting as the gentleman pointed out in the coal industry 5,000 jobs are going to be lost or have been lost as a result of the price cutting taking place over there because of the previous sanctions. BILL BROOMFIELD, of Michigan, the ranking Republican on the Committee on Foreign Affairs, estimated that at least 100,000 American jobs would be lost in the short run, not in the long run, in the short run if this new sanctions bill passes. So we are not talking just about what it is going to do to hurt the blacks and entrench those who are for apartheid; it is going to hurt Americans very severely as well.

Mr. Speaker, I submit a "Dear Colleague" and a table of selected metals for the RECORD:

HOUSE OF REPRESENTATIVES,
Washington, DC, May 24, 1988.

DEAR COLLEAGUE: On May 18th the Washington Post reported on the South African Black Taxi Association (SABTA), describing it as "a major economic force . . . its lobbying potential already has been recognized by both conservatives and radicals in black politics." James Ncgoya, the president of SABTA, testified before the Subcommittee on Africa on H.R. 1580, the Dellums-Wolpe South Africa legislation:

"I sat in this room yesterday and heard people say that if sanctions make black people in Africa suffer more, that does not matter because they are suffering already and won't mind suffering some more. I even heard them say that whether more sanctions will help bring down apartheid doesn't matter, because imposing sanctions puts America on the right side of history. Does that mean you really do not care what the black people of South Africa want? I ask you to listen to our voices before you decide what is good for us. Before you decide that black children must go hungry so you can be on the right side of history."

In 13 polls taken over the past four years by a variety of private research institutes and newspapers, South African blacks have opposed sanctions and disinvestment, mostly by a margin of 3 or 4 to one.

Is anybody listening?

Don't cosponsor H.R. 1580 until you know the facts. For more information call Saul Singer at 6-7810.

Sincerely,

DAN BURTON,
Member of Congress.

TABLE 2.—CHANGES IN IMPORTS OF SELECTED METALS FROM COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE COUNTRIES FOLLOWING THE ANTI-APARTHEID ACT

Commodity/Units	Base period (1981–85)	12-month period (10/86–9/87)	Percent increase
Antimony—1b	1,281	62,551	4,783
Chrome ore (Refrac.)—GTon	1,252	3,220	157
Industrial diamonds—Car.	2	100	4,900
Ferrosilicon—Glb (U.S.S.R.)	692,970	3,302,975	377
Platinum bars—TroyOz	491	2,066	321
Rhodium—TroyOz	620	3,012	386
Platinum sponge—TroyOz	874	1,510	73

Source: Bureau of Census and Office of Strategic Resources, U.S. Department of Commerce.

Mr. Speaker, I submit a group of articles for the RECORD:

[From the Washington Post, May 18, 1988]

TAXIS GIVE BLACKS A CHANCE AT THE DRIVER'S SEAT

(By William Claiborne)

JOHANNESBURG.—As dusk settles over the quickly emptying city and a crush of white office workers heads in gleaming BMWs and Mercedes for the M-1 expressway and the manicured suburbs of northern Johannesburg, another migratory ritual is played out almost unnoticed in the opposite direction.

Huge crowds of black workers spill off the sidewalks of Sauer and Bree streets, frantically pointing fingers in the fading light.

Nothing is said, but the language is understood: A "V" sign means the intended destination is Sharpeville or another black township in the Vaal River triangle south of Johannesburg; fingers circled mean Orlando, in Soweto.

Long lines of commuters, stretching for a block or more, slowly shrink as the black workers crowd 16 or 17 at a time into minibuses, encouraged to move faster by a driver who can barely make himself heard over the rock music blaring from his radio.

In an hour, the streets of South Africa's largest city are practically deserted.

The metamorphosis is accomplished mostly by the black taxi industry, an increasingly powerful institution in South African life and one that holds the potential for political as well as economic muscle for the country's disenfranchised black majority.

In just five years, the membership of the burgeoning South African Black Taxi Association (SABTA) has grown from 8,000 to 45,000 licensed jitney-buses, and it has set its sights on a membership of 100,000, plan-

ning to bring in an estimated 55,000 pirate taxi operators in the next 18 months.

The black taxi industry has grown spontaneously, much to the chagrin of the white-controlled public transport industry, from black public demand for better service than that offered on buses and trains.

Apart from becoming a major economic force—SABTA's taxis use 211 million gallons of gasoline annually, making it the country's biggest private fuel user—its lobbying potential already has been recognized by both conservatives and radicals in black politics.

Its president, Thupane Ncgoba, recently testified against economic santions before a U.S. congressional committee. At the same time, young black township radicals, known as "comrades," are acutely aware that no boycott or protest strike can succeed without the cooperation of black taxi operators.

When the late prime minister Hendrik F. Verwoerd and his social engineers made the concept of "Grand Apartheid" a reality, state-controlled or subsidized public transportation was regarded as a lynchpin for moving cheap black labor from the newly created tribal homelands and satellite black townships to the city workplace.

Out of that strategy evolved a human cargo rail network owned by the government's South African Transport Services and a privately owned but heavily subsidized monopoly bus company called Putco controlled by Albino Carleo, the son of an Italian immigrant.

The rail and bus networks are still in place. The crowded trains and pale blue Putco buses still carry hundreds of thousands of workers daily from the homelands and townships to the factories and businesses of South Africa's big cities.

But the black-owned minibuses, offering faster and often cheaper service, are eating steadily into the white-run transport monopolies' profits, forcing the government to increase it subsidies to Putco and to absorb greater losses on some of its rail routes.

More importantly, say SABTA Leaders, the black-owned jitneys are helping to create a new class of South Africans—black entrepreneurs whose economic clout is seen by some as a vehicle for dismantling the apartheid system of racial separation.

Historically, the taxi industry in South Africa has been an example of the government's success in suppressing the black majority's entrepreneurial spirit.

In 1892, when black carriage owners flourished in Cape Colony, the government passed legislation forcing them out of the business. It was not until 1930 that the first black-owned motor taxi began operating, in the Katlehong township near Johannesburg.

In the early 1960s, second-hand Chevrolets became popular as township taxis, but it was 1970 before the government allowed black taxi owners to use minibuses to carry up to eight passengers.

Pretoria briefly banned the use of minibuses for black transport in 1980, but the newly organized SABTA fought the decision and got it overturned.

SABTA's victory increased the average black taxi owner's income by 70 percent almost overnight, triggering a boom in the industry, association officials said.

"Since then we've never looked back. We've had to push hard for everything we've gained, and we're still pushing," James Chapman, SABTA's national adviser, said in an interview at the association's Pretoria headquarters.

Chapman, who is white, has been responsible for much of SABTA's rapid growth, although he said he takes his orders from the black executive committee and limits his efforts mostly to marketing strategy.

He said he was operating a service station in Pretoria when he realized the economic potential of black jitney-taxis and asked the drivers to support his business. In return, he met with the association and helped it to reorganize and expand.

The group also formally changed its name to the Southern African Bus and Taxi Association, but the new title never caught on, and passengers and drivers alike still call it the Black Taxi Association.

Because black taxis are a cash business in the informal sector of South Africa's economy and drivers are reluctant to tip their hand to the tax authorities, SABTA does not disclose its members' incomes.

But the association's rapid expansion is illustrated by its consumption statistics. Its members spend more than $400 million a year on spare parts and accessories and $85 million annually in insurance payments; they buy more than a million tires a year and represent South Africa's biggest private purchaser of vehicles.

The association owns 17 service stations nationwide and has plans to buy dozens more on a cooperative basis, providing more jobs for blacks.

Chapman said the association is moving into the full-sized bus business and is beginning to claim a corner of the road freight industry.

Its ambitions reached a peak last year when it came close to buying the Carleo family's 52 percent interest in Putco for $120 million, but the deal fell through at the last minute in a dispute with financial backers.

During the attempted buy-out, a consortium of Afrikaner businessmen tried to block the deal, first by offering more money and then by threatening to go to the government's Competition Board.

"We've proved already that we are busy changing the economic landscape. We are not regarded as just a junior partner anymore," Chapman said.

Although it may go against the grain of socialist thinking in the black liberation movement, SABTA remains firmly committed to a belief that the undoing of apartheid and a turnover of power from the white minority will come inevitably from an economic, not a political revolution.

The key to fair power sharing, SABTA maintains, is the creation of a well-organized black entrepreneur class that in tandem with the growing black trade union movement can exert powerful economic influence on a recalcitrant white government.

"I won't say that right now, if we threw down the gauntlet, they would listen to us. This government hasn't listened to anybody," Chapman said.

But he said if other black entrepreneurs, such as those in the growing black building industry and the estimated 900,000 black street vendors in South Africa, were able to combine their collective purchasing power, "We might have a more important effect on the government."

The street vendors recently organized into the African Council of Hawkers and Informal Businesses (ACHIB). But although they have begun to impress the government with their economic might—hawkers spend $14 million a year in the Johannesburg wholesale fruit and vegetable market alone—they have not organized as effectively as the black taxi owners.

A properly organized black consumers' movement, Chapman predicted, could have "unbelievable possibilities" in exerting influence for political change in South Africa.

Economists estimate that blacks comprise 52 percent of the total purchasing power in South Africa, while holding barely 2 per cent of the country's assets. Blacks make up 85 percent of the population.

The Black Consumer Association recently opened its first "people's cooperative" store, Chapman noted, which could develop into a trend that white businessmen could not afford to ignore.

Historically, Chapman said, white businessmen have tended to press hardest for political reform when they have felt their investments threatened, such as during 1986, when the value of the rand plummeted and business fell sharply as a result of social and political upheaval.

"Unless there is a change of heart from the [white] business sector, we will not solve South Africa's problems," Chapman said. "They can turn the government. And there is nothing like black economic muscle for forcing that change of heart."

[From the Washington Post, June 16, 1988]

SANCTIONS—OR STRIKES?

(By William Raspberry)

There are at least a couple of ways to think about the upcoming debate over new, tighter sanctions against South Africa.

First, the debate can be seen as a good-guy, bad-guy argument between those who are seriously concerned about the plight of South African blacks and those whose interest only developed after sanctions were proposed.

Second, it can be viewed as a debate over the most effective way of ending apartheid.

Clearly, sanctions—up to and including the nearly complete severing of U.S. economic, diplomatic and military links with South Africa's racist regime—is the most militant position an American can take. It is so strong a position, at least in terms of the domestic bebate, that it requires no more explanation on the part of those who hold it than simple opposition to apartheid.

That is why the Dellums-Wolpe bill is likely to prevail. That bill would prohibit all U.S. investment in South Africa, all imports from South Africa except strategic minerals and publications, U.S. military and intelligence cooperation with South Africa and energy leases in the United States by any person investing in or exporting oil to South Africa.

It clearly would strike hard at the South African government. But what would it do to end aparthied?

That is the question some Republicans, led by Rep. Dan Burton of Indiana, are trying to force into the debate. Burton's claim is that the Dellums-Wolpe bill is "anti-apartheid in name but not in effect" and that it would "actually blunt the tools that blacks are using in their struggle to end aparthied."

He argues that the sanctions already enacted have, by reducing the influence of American-based multinational companies, reduced efforts to improve conditions for black South Africans while forcing South Africa to become more self-sufficient.

"About 70 percent of South Africa's export income is derived from items that are essentially unsanctionable: gold, diamonds, platinum and other raw materials. . . . Four white South African corporations currently own 83 percent of the capital on

the Johannesburg stock exchange. If the disinvestment provision [of Dellums-Wolpe] goes into effect, these corporations will probably be the main beneficiaries. Tax revenue to the South African government will rise, as the new owners increase profits by cuting payroll and abandoning black development projects undertaken by the former owners."

A number of internationally respected black South Africans have nonetheless urged the tightening of the sanctions screws. They acknowledge that blacks may be hurt initially, but they are prepared to endure interim economic pain in the interest of long-term weakening of the economic structure that supports apartheid.

Whether that is the view of most ordinary black South Africans is far from clear. What is clear is that if weakening of the South African economy is the way to fight aparthied, South Africa's blacks could do it more directly—and much more quickly—by staging a general strike. South Africa's economy relies heavily on blacks, both as workers and as consumers. But such strikes as have been called, including the recent three-day strike of the Congress of South African Trade Unions, have targeted economic advancement for the strikers, not the destruction of the national economy.

Sanctions, says Burton, would undercut the strike as an important weapon against apartheid. Black unemployment, he says, reduces the ability of blacks of fight apartheid.

So what would he propose? His answer is contained in a substitute bill that would authorize housing loan guarantees for "disadvantaged" South Africans and provide for major new expansions of economic, educational and legal assistance and housing opportunities for South African blacks.

As Saul Singer, minority staff cousultant to the House Foreign Affairs subcommittee on Africa (on which Burton is ranking Republican), said the other day: "We've been trying for months to get people to think about how best to increase the power of South African blacks to fight apartheid. But what I see coming down the road is a completely sterile debate pitting U.S. jobs and strategic minerals against South Africans' yearnings for freedom. We need to shift the debate onto moral and policy grounds and away from strategic and political grounds."

The question, he insists, is not what is the most acceptable position in terms of the domestic debate, but what is the best way to help end apartheid.

It is the right question.

[From the Washington Post, June 15, 1988]

MORE SOUTH AFRICAN SANCTIONS?

A bill imposing tough new sanctions against South Africa is coming along—nearly all investment and trade would be ended—and if the purpose is to express a hatred of apartheid and an impatience with its slow dismantling, this bill surely expresses both. The white minority regime has just extended the two-year state of emergency, tightened censorship and curtailed political activity by the black labor federation. The regime's reach for reform, such as it was, has been closed off by the surge of opposition on its right. In Washington, the House says South Africa has not made the "significant progress" the 1986 act sets as the standard for lifting the lesser sanctions imposed at that time, and has even gone backward.

In this analysis of what has happened, the House is right, but what it needs to ask is why progress has been disappointing. The House, which has passed the bill, sees the regime as gripped by a "fantasy that it can hold onto its monopoly of power indefinitely, free of severe economic costs and deepening international isolation." But few South Africans think they are headed down a cost-free path. They know the costs are heavy and getting heavier, but, tragically, they think these costs are more bearable than the risks of letting go. Meanwhile, they have available the great powers of a modern state to inflict terrible costs on the majority.

This underlies the agrument against sanctions that Helen Suzman, a South African parliamentarian and veteran opponent of apartheid, makes on the opposite page today. Noting the crucial role an expanding economy plays in black empowerment, she declares: "It is surely senseless to blunt [by sanctions] the only weapon with which blacks can improve their position at the work place, and beyond the work place." Precisely this notion of giving blacks an economic base for which they can if they wish withhold their own labor and purchasing power stirs the strike movement that is becoming an increasingly important arena of black struggle.

The bill was brought along at a momemt when it could be hitched to the election campaign. Michael Dukakis may have doubts about the Jackson team's platform demand to designate South Africa as "terrorist"—a word of many rings—but he is foursquare for sanctions. In the Senate the issue is what changes will be made to win enough Republican votes to surmount the expected presidential veto. But we don't think any new sanctions are justified while such doubt exists about whether the old ones were wise.

[From the Washington Post, June 15, 1988]

(By Helen Suzman)

A WRECKED ECONOMY WON'T END APARTHEID

At his enthronement in Cape Town in September 1986, Archbishop Desmond Tutu stated that "the onus is on those who do not want sanctions to provide us with a viable, nonviolent strategy to force the dismantling of apartheid." He has repeated his challenge several times since then.

While I disagree with the underlying premise of this remark—i.e., that sanctions do provide such a stretegy—he is certainly justified in asking what the alternative is. And the question is particularly relevant when it comes from a man who does not have a vote, despite the fact, as he has often pointed out, that he is a South African by birth, the head of the Anglican Church in southern Africa and a Nobel laureate.

Short of getting rid of this government and replacing it with a nonracial democracy—which is highly unlikely in the foreseeable future, sanctions notwithstanding—the sad truth is that there is no instant solution that will transform the South African scene. There are, in fact, only the long-term effects of economic expansion within the country itself—that is, the same factors responsible for those noncosmetic changes that have already taken place.

The repeal of job reservation—the law that reserved skilled work for whites—was a result of the increased demand for skilled labor to meet the growing requirements of the economy.

The recognition of black trade unions came about as a result of "wildcat" strikes, no one with whom to negotiate and the need therefore to bring the emerging black labor movement within the purview of the industrial conciliation machinery. The acceptance, at long last, of the permanence of blacks in the urban areas came about because of economic forces motivated by the "push factor" of poverty in the black rural areas and the "pull factor" of job opportunities in the "white urban areas." The irresistable force led finally to the impossibility of implementing effectively the hated Pass Laws and Influx Control, which restricted the mobility of blacks, and to their repeal two years ago.

None of these changes, however, has heralded the removal of such fundamental cornerstones of apartheid as the Race Classification Act or the Group Areas Act and the Land Acts, which designate ownership and occupation of land and property on a racial basis. Nor has the crux issue of political rights for blacks been addressed. But given the obduracy and military strength of the present government, it must be conceded that any prospect of a transfer of power by the National Party government is just not on the agenda. Survival is now the issue, and a siege economy is preferable, according to National Party thinking.

In the unfounded hope, therefore, of the rapid demise of the apartheid regime, it is surely senseless to blunt the only weapon with which blacks can improve their position at the work place, and beyond the work place, through their economic muscle, mobilized in trade union structures, and through their consumer power in the market.

Restriction of the economy through sanctions must inevitably result in a decrease in the demand for labor and widespread unemployment. Why then are sanctions and disinvestment advocated by people who are working for black advancement, thereby undermining the major power base that blacks can obtain? Some, like the archbishop, sincerely believe that this strategy will expedite the dismantling of apartheid. Others hope it will bring down the capitalist system, which they identify with apartheid.

The archbishop encourages disinvestment as well as sanctions, as evidenced by his refusal recently to accept an honorary degree at Tulane University because the trustees of the university had not divested of stocks in companies operating in South Africa.

Surely foreign firms should, instead, be encouraged to continue with their very extensive programs to help lay the foundation for a stable postapartheid society. In the past eight years U.S. corporations in South Africa, for example, spent more than $210 million on education, training and housing of their black employees and their families, on health facilities and on legal aid. Withdrawal of these firms has inevitably meant reduction or even curtailment of these programs, to the detriment of future black leadership and its participation in the postapartheid era. And once gone, the influence such firms exercised on the local scene is gone too.

Power takes many forms, and in South Africa today, blacks are slowly but surely accumulating economic power as they are drawn into the national economy, not only in ever-increasing numbers but at rising levels of skills. Economic muscle can be used, as has been shown in all industrialized countries, to redress imbalances in wealth, privilege and power.

I do not believe that South Africa will be the exception, though the solution offered is long term, and there is no doubt that

blacks are impatient, as one can well understand, for change—fundamental change—now.

The archbishop has stated that if certain demands are met, he will call for the withdrawal of sanctions and presumably of disinvestment. However, once sanctions have been imposed, and once established enterprises have withdrawn, it will take more than the green light from the archbishop to restore normal trade and industrial activity, as the Rhodesian/Zimbabwean example demonstrated: few firms returned after liberation.

Moreover, if the United Nations imposes mandatory sanctions against South Africa, one veto at the Security Council will prevent those sanctions from being lifted.

An expanded economy is the mechanism that creates jobs and wealth in which all must share. Contact and a diplomatic presence within South Africa exercise significant influence. Isolation and a wrecked economy may give moral satisfaction to some of those who oppose apartheid, but this course of action should surely be weighed against the unintended consequences that are likely to result.

(The writer, a member of the South African parliament, belongs to the Progressive Federal Party.)

[From the Washington Post, June 17, 1988]

(By Stephen S. Rosenfeld)

SANCTIONS: A WASHOUT

We are into another sanctions debate, this time, again, on South Africa, and it doesn't look good. On no single issue have politicians, the interest groups and, yes, journalists been more erratic, unbalanced and unhelpful than on the question of using economic pressure to shape political decisions in foreign lands.

At least since the United States cut off grain exports to punish the Soviet Union for invading Afghanistan, almost every sanction imposed has been at best a washout. Jimmy Carter's grain embargo gave those of us who supported it a feeling of grim satisfaction, but accomplished no visible part of its foreign policy purpose and was terminated on free-market grounds by Ronald Reagan.

As for weaker and presumably more docile targets: no doubt American economic sanctions added a layer to the burdens imposed on Nicaragua by revolution, war and Sandinista arbitrariness. But the impact probably fell most heavily on the pro-democracy middle class and the suffering peasants—the people we wanted to help—and pluralism remains a glimmer on a receding horizon. Sanctions against Panama, uniquely vulnerable because of its dollar-based economy, have wrought crushing and conceivably even permanent economic damage but have been exploited politically by Gen. Noriega, the rogue they were meant to expel.

About the only place where sanctions worked fairly well is in Poland. Their imposition when martial law was imposed and their gradual lifting as certain rights were restored did not demonstrably drive events but at least fit the curve of events. As things got worse we added to the pressure, and as things got somewhat better we went with the flow.

Now, having reflected too little on our experience, we are contemplating toughening the limited South Africa sanctions imposed in 1986. The argument is that, to get results, we have to do all the way a job that we did only halfway two years ago. But at least as good a case can be made that sanctions stiffen white resistance to change and weaken the foundation of black resistance to apartheid and that some part of the reason why reform goes poorly lies in the sanctions invoked in its name.

Anyone who has been drawn into these debates knows that the pro side commonly regards pragmatic questions about what works and what doesn't as an affront and a cop-out. Those who think it might be nice to be more consistent in the application of sanctions from one place to another tend to abandon the effort as too hard. The reason is, I think, that sanctions have come to occupy a more important role in our overall foreign policy than they actually deserve.

At one time, the United States could theoretically select from a long menu of unilateral options, including military force and covert operations, in the hard cases. But the progress of politics has shortened the menu and left a proportionately larger preoccupation on the remaining fewer options, including sponsorship of anticommunist insurgencies—the most provocative American policy of the 1980s—and economic sanctions. The desire to affect distant outcomes dies hard at both ends of our political spectrum, even though the means are diminished.

This is how we come to impose sanctions rather casually, to expect them to perform ambitious political tasks and then to be slow about checking how they are going. At this moment, for instance, sanctions tougher than any we have imposed on hostile countries are running against the friendly country of Panama. The entire American apparatus seems paralyzed, unable to put aside pride, to admit to the unanticipated economic as well as political consequences and to terminate these unhappy measures.

Other countries, perhaps not wiser than we but raised in a political culture that does not demand such urgent results from foreign policy, are slower to make commercial links hostage to political enthusiasms. In our passages of outrage, we come easily to the view that these countries lack civic virtue and moral fiber. I do not want to make an argument for being cynical and worldly. The capacity for outrage is one of the prides of the American character. But along with it comes a risk of selectivity and overreaching. A little self-discipline and a little humility are in order.

[From the Washington Post, June 12, 1988]

INSIDE S. AFRICA'S QUIET TOWNSHIPS, NEW BLACK POWER TACTICS

(By William Claiborne)

JOHANNESBURG.—Across the face of South Africa, they cling to the edges of prosperous white cities like unwanted appendages, providing a vast pool of cheap labor that emerges in the morning to stoke the country's production and retires at night to the seclusion that has been mandated for the black race.

They are known as the "townships," hundreds of satellite ghettos that were the inevitable result of decades of black urbanization and the failed experiment in social engineering called apartheid.

Their names—Soweto, Crossroads, Sharpeville, Mamelodi, Alexandra—became familiar around the world, synonymous with violent rebellion and brutal police and Army repression. And then they went quiet.

But behind their tranquility, enforced by a national state of emergency imposed two years ago today, the townships are undergoing a collective metamorphosis, one that seeks to supplant the street battle against the overwhelming military might with a new revolutionary strategy of denying whites the vast black majority's most valuable commodities—its labor and its enormous purchasing power.

"Denying the master what he needs most—the benefit of my services and my money—that is what will bring me freedom, not throwing stones at Hippos [armored personnel carriers]," said Thabo Gallens, who works as an assembly line quality control inspector at a Mobile Oil Corp. factory next to the Kagiso Township near Krugersdorp, west of Johannesburg.

"As soon as we blacks realize the strength of our labor and our pocketbooks, the closer we will be to liberation. The 'comrades' [young militants] played their part, and the revolutionary climate meant that the day of reckoning got closer. But now it is time for a new strategy. It is going to take longer, but at the end of the day it will win."

Gallens was speaking at the start of a three-day nationwide strike last week by more than a million blacks to protest emergency crackdowns on unions and anti-apartheid groups by the government.

The Congress of South African Trade Unions (COSATU), in an attempt to avoid prosecution for making "subversive" statements, had urged blacks to join in an unspecified form of protest. They took the hint by staging a general strike—the first of what the unions say will be many.

Two years ago this week, the townships' images flashed relentlessly across television screens around the world: Hippos packed with helmeted soldiers lumbering through shantytown streets littered with rocks and burning barricades, and white policemen with snarling dogs and long rubber whips wading into crowds of jeering teen-agers

As a result of the emergency and, later, the enforcement of the most draconian press restrictions in the western world, the images of black defiance of white authority have faded from the television screens and much of the world's consciousness

But the townships are still there, and so are the people whose expectations of instant political fulfillment soared so mightily that young street fighters committed arson and even murder in front of American television cameras, assuming that the government would collapse before the film found its way to Pretoria for use as evidence in prosecution.

Now those expectations have been lowered dramatically, and a new mood has settled over the townships like the blanket of acrid coal fire smoke that hangs over the Soweto valley each morning in this cold Southern Hemisphere winter.

The mood is not easy to define, even by returning day after day to different townships to engage blacks in conversation in the living rooms of their tiny brick homes, in their illegal beer parlors, called * * * in their work places and in the teeming streets of their ghettos.

The townships are not ideologically monolithic; there are radicals, moderates and conservatives among their inhabitants, and many political shades in between.

But after a while, some themes begin to emerge, a rhetorical tapestry that conveys a feeling of fatigue, subdued expectancy and resignation to the certainty of a longer haul in the struggle for equal rights and opportunities than that envisioned two years ago.

Attention seems to have been diverted, at least for the being, to improving individual economic well-being while new strategies are sought to achieve the larger goal of black voting rights.

Most importantly, there is a sober realization that liberation is not likely to be won in the streets by angry young men throwing stones and molotov cocktails at wave after wave of armored vehicles mounted with machine guns.

Since violence erupted in 1984, more than 3,000 people have died in township violence, and tens of thousands have been imprisoned at one time or another.

That is not say that blacks dismiss the possibility of a cycle of violence repeating itself, as it has after periods of enforced calm since March 21, 1960, when 69 people were shot to death by police in Sharpeville.

More violence is inevitable, most blacks interviewed said. But they also said it is unlikely that the government will permit confrontion to reach the pitch it did from 1984 to 1986, when many thought the white rulers were beginning to stagger from the pressure.

Isaac Meletse, a social worker, sat in the tiny living room of his four-room Soweto house and echoed Thabo Gallens. "For a long time, the status quo [of repression] set the agenda and the people reacted to it. Now people are tired of being cannon fodder. They want to set their own agenda and exert their economic muscle."

Another recurring theme in conversations with black township residents was the notion that better living conditions and a gradual, if slight, increase in home ownership have contributed to the shift of strategies of many township blacks.

Thabo Moeketsi, 30 who works with handicapped children in Soweto, recalled that when the violence flared in 1984, he was living in a two-room house with a dozen members of his extended family.

"When I was young, I yearned to live in a nice house with a toilet inside. Yes, I got angry when the police came in and beat up my friends, and I yearned for freedom like all blacks do. But I also yearned for a nice house," Moeketsi said.

Last September, Moeketsi and his wife, a registered nurse at Soweto's Baragwanath Hospital, pooled their incomes and bought a relatively spacious, three-bedroom house in Kagiso, complete with a decorative foundation in the foyer.

The $500 monthly mortgage payments strain the family budget, but Moeketsi said the responsibility of home ownership has changed his attitudes.

"Burning people's houses, that is one thing I will never believe in now. They will come and burn your house. When you own your own home, no matter how simple, you will not be so quick to burn someone else's house," he said.

Another manifestation of that attitude is the return of young blacks to school.

During the civil unrest from 1984 and 1986, black education in the townships was brought to a virtual standstill, with many students turning to the streets to confront security forces. "Liberation before education" was the rallying cry of almost continuous school boycotts.

Late in 1986, parents rebelled at the comrades intimidation of children seeking to go to school. Supported by the National Education Crisis Committee, they got the schools going again. The result was that there were no boycotts last year and, while segregated black education remained abysmally inferior to that for whites, a record number of black pupils took their year-end examinations.

Deep in the poorest section of Kagiso, a township of 70,000 not known for confronting government authority during the 1984-86 riots, a dozen young black men sat around a table drinking from quart bottles of Castle beer and talking black politics.

The nondescript house where they gathered is one of Kagiso's unnamed shabeens, a sub rose institution in the township.

The talk was laced with fiery rhetoric and occasional shouts of *amandlal;* (power), so the young men were reluctant to invite a visit by the security police by identifying themselves to a reporter.

But beneath the bravado and self-assurances that white rule is about to collapse, a sense of battle fatigue and despair over the unlikelihood that blacks will soon realize their political aspirations kept creeping into the conversation.

"Liberation is not in sight. They have the guns and we have nothing. If you throw a stone, they detain you. The only people who get hurt are the black people," said a 26-year-old unemployed laborer wo called himself "Lucky."

An older patron, who said he would not be able to make ends meet this month because he had joined the general strike, interrupted, saying, "No white man will liberate the black man as long as he is enjoying the fruits of the black man's work.

"The whites have their money because of our labor," he added. "That's all you have to say. If we get together as one unit, we will be able to cripple their economy. With stayaways and consumer boycotts, we have power. But if we are not together, we have no power."

The talk shifted to the possibility that workers who took part in political protest strikes might be dismissed, as some employers and the government have threatened.

"Let them be dismissed! It will feed the struggle. We have the force," one speaker shouted, to more cries of "amandla!"

The significance of the ahabeen patrons' comments is that the transition from blind faith in street confrontation to supreme confidence in economic confrontation is a grassroots phenomenon.

It is not a key part of the revolutionary rhetoric of the outlawed African National Congress, which is still talking about waging a "people's war" and at times seems to be out of step with many township residents, athough most blacks still regard the ANC as a symbol of their aspirations.

Nor is it part of the rhetoric of respected black leaders such as Anglican Archbishop Desmond Tutu and the Rev. Allan Boesak.

It is a strategy that appears to be moving from the bottom up—spontaneously—and many blacks said they were proud of that fact.

The irony is that the strategy conforms so closely to the government's current line, which is that blacks must achieve economic power before they can attain political power—although Pretoria's strategists clearly did not have protest strikes and consumer boycotts in mind.

The government's strategy has had three phases: to crush the violence with a show of strength and the detention of agitators; to attempt to reduce political discontent by dealing with blacks' grievances over unemployement, housing and education, and, finally, to try to give blacks some say in national government.

While the government succeeded in disrupting the comrades' shadow government of street committees, it did not eliminate the resistance. It only drove it underground, where it reorganized in a less structured form, township residents said.

Even before the press carried reports of COSATO's plans for a three-day general strike, word of the protest went out through the grapevine and township residents began stocking up on food, withdrawing money from the bank and filling their cars with gasoline.

Most stores, banks and service stations in the townships were closed during the strike.

"On the surface there is silence, but beneath there is activity," said Eric Mvundlela, a Soweto contractor. "It is not violent like it was before, but it is there. Do not be deceived by appearances."

Other residents said that organizing for the strike was conducted covertly by low profile groups that are not normally watched closely by the security police, such as neighborhood civic associations, women's organizations and local youth congresses.

"The thing about the emergency is that there is more politicization than ever, but it is following a different strategy. If they (the police) put down one organization, another will be created to take its place," said Mvundlela.

If more general strikes and consumer boycotts are staged, it will be these grass-roots groups that do the real organizing and not the big, high-profile opposition groups that issue the call and grab the headlines, he said.

Once again, I thank my colleague for yielding.

Mr. CRAIG. I thank my colleague once again. The reason I have targeted a specific area to talk about is because I think it is easier to understand what we are and what we do here in the Congress when we talk about the broad term of sanctions, to understand how it impacts a given area of our economy.

When I talk of chrome and the importance of that as an industrial metal and that United States imports from the Soviet Union, as a result of our past actions against South Africa, increased 157 percent and South Africans lost jobs in the chrome mining industry; in the ferrous silicone 377 percent. In fact, it is interesting that in the platinum group metals that are so critical for catalytic converters and those types of areas that we have discussed which enhance our environment, that the Soviet Union has had to open a new mine just to supply the demands that are now being placed on them by buyers from the United States. Of course, you have heard, as I have, many Members stand on this floor and talk about the slave labor of the Soviet Union, especially in the area of mining and in the area of industry.

Here we are finding out that our sanctions against South Africa have in fact caused a new mine to open up in the Soviet Union in large part where people are treated in a slave-like status.

Now the name of the game here is, of course, human rights as we deal with apartheid in South Africa. Yet not one person has suggested that we may be forcing more citizens of the Soviet Union into a slave-like environ-

ment simply because of a very narrow point of view that is being argued as it relates to apartheid.

I cannot understand the logic when black South Africans come here and talk about the destruction of jobs and the destruction of the economy that employs them and provides them with one of the better standards of living for blacks in Africa in the whole of the African Continent, that we have people in this Congress simply ignore it and say that the name of the game is to suffer and "we will inflict the suffering on South African blacks while we do not inflict any suffering upon ourselves."

That kind of hyocrisy is mind-boggling to me but it is one that is being practiced every day on the floor of this House by those who stand strongly in behalf of the sanctions that are being imposed and those that are being proposed to be imposed on the nation of South Africa and the economy of South Africa and the job base that employs millions of blacks from the whole continent of Africa itself.

Well, I hope that the point I have made tonight is clear, clear for the record of this Congress that the limited sanctions that we have already imposed have driven us, as an industrial nation, into the arms of our enemy, the Soviet Union, as a supplier of major critical and strategic metals for the defense industry and for the whole of the economy of this country.

I find almost impossible to believe that we would do that. But now the record demonstrates clearly that we have.

The report that I mentioned from the Department of the Interior as relates to the impact upon the metals that are so necessary for our economy if we were to experience either an embargo from this side or an imposed embargo from the South Africans as a reaction to further sanctions that we might place on this economy, on their economy, is hard to believe.

Well, this is the purpose for this special order tonight, to address this issue; it is only a part of the total issue but I think it is an important part. It is one that is hard to understand. To merely suggest that strategic and critical metals and materials are important to this country and we ought to impose sanctions because of it, is one thing. But it is much easier to understand when you begin to recognize it is in the area of our economy that is very critical.

UNIVERSAL VOTER REGISTRATION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. FISH] is recognized for 60 minutes.

Mr. FISH. Mr. Speaker, I welcome this opportunity to comment on H.R. 3950, legislation establishing national standards for Federal election voter registration. I believe that congressional consideration of matters addressed by this bill, which I am pleased to cosponsor, represents an important step in our national effort to broaden the availability of the franchise.

H.R. 3950, in my opinion, should be viewed in the historical context of many advances in voting rights. We have amended the Constitution to bar denials of voting rights "on account of race, color, or previous condition of servitude" (15th amendment), "on account of sex" (19th amendment), "by reason of failure to pay any poll tax or other tax" (24th amendment, applying to Federal elections), and "on account of age" (26th amendment, applying to citizens at least 18 years old). Numerous Supreme Court decisions have invalidatd bars to voting rights, including Carrington versus Rash, striking down an irrebuttable presumption of nonresidence for military personnel, and Harper versus Virginia Board of Elections, concluding that a State election poll tax is unconstitutional.

Congress has recognized its responsibility to safeguard the franchise—as evidenced by the passage of the Voting Rights Act of 1965 and various amendments to this landmark legislation. The current effort to remove additional barriers to voting is an expression of our continuing commitment to facilitating political participation.

Why is it important for us, as legislators, to give continuing attention to facilitating a broader franchise? The Supreme Court's observation in Wesberry versus Sanders is particularly pertinent:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.—376 U.S. 1, at 17 (1964).

Raymond Wolfinger and Steven Rosenstone observe in their book, "Who Votes?," that "for most Americans, voting is the only form of political participation." The removal of unnecessary obstacles to voting can help enhance public involvement in American government and add to the vitality of our participatory democracy.

The objective of H.R. 3950 is to make voting less burdensome. Individuals are deterred from voting not only by invidious discrimination—which the courts and the Congress have addressed on a number of past occasions—but also by the details of voter registration provisions. "[I]ndirect barriers (to voting)," Eric Secoy writes in a recent law review article, "may be just as effective at abridging rights as direct barriers. [Footnote omitted.] Voting registration procedures, although they do not irreversibly disenfranchise anyone, can be formidable indirect barriers to voting." ("Providing Access to Voter Registration: A Model State Statute," 24 Harvard Journal on Legislation 479 at 489 (1987).)

H.R. 3950 effectively assures individuals a number of voter registration options for Federal elections: First, registration by mail; second, registration at a range of agencies; and third, registration at the appropriate polling place on election day. The result of enhanced registration options, in my judgment, will be enhanced participation in elections. "The likelihood that an individual will vote," Wolfinger and Rosenstone write, "is a direct expression not only of his motivation to vote but also of the costs associated with doing so. The easier it is for a person to cast a ballot, the more likely he is to vote." ("Who Votes?".)

Is the availability of voter registration on election day consistent with the governmental interest in preventing fraud? Three States do permit registration on election day, and one State has no registration on election day, and one State has no registration requirement. A recent Yale Law Journal article claims that "[s]ystematic election fraud is more likely to be conducted by election officials than by private individuals, and at the voting rather than registration stage. Registration restrictions thus are ineffective means of combating the more prevalent forms of voter fraud." [Footnotes omitted.] ("Voter Registration: A Restriction on the Fundamental Right to Vote," by Deborah S. James, 96 Yale Law Journal 1615 at 1635 (1987).) Election officials can be authorized to take special measures to verify the eligibility of individuals registering at the polling place. See section 6 of H.R. 3950.

An important point is that many individuals today are deprived of voting opportunities because they fail to meet voter registration deadlines. "[T]urnout might increase by more than six million voters within four years" with the adoption nationwide of election day voter registration, according to the Committee for the Study of the American Electorate. (Creating the Opportunity.) There are strong reasons for Congress to consider whether fraud prevention in the late 20th century may not require registration in advance of Federal elections.

An examination of the voting process—with emphasis on exploring options to reduce voting barriers—is an appropriate endeavor for this historic 100th Congress. "Modern voter turnout," Robert Landers observes in a recent Congressional Quarterly editorial research report, "is low not only by comparison with turnout in 19th century America but by comparison with turnout in most other Western industrialized democracies." ("Why America Doesn't Vote.") The challenge we face is to facilitate voting without creating unreasonable administrative burdens or compromising the integrity of the voting process. I am confident that we can succeed in making election participation easier for millions of Americans.

RAISING THE GAS GUZZLER TAX: AN INCENTIVE FOR FUEL EFFICIENCY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. STARK] is recognized for 5 minutes.

Mr. STARK. Mr. Speaker, although the last 10 years have seen an encouraging increase in the fuel efficiency of automobiles, the United States and its allies remain heavily dependent on imported oil. Dependent on foreign governments of dubious stability, dependent on terrorist nations. Our enormous trade deficit is made up in part by increasing oil im-

ports. Clearly we must step up our efforts to conserve this natural and finite resource.

If the current rate of demand continues unchecked, by the mid-1990's the United States will be forced to import up to 75 percent of its oil, half of which will come from the politically unstable Middle East. If we do not make some serious plans now, we will be faced with a much greater fuel crisis and far fewer options than was the case in the mid seventies.

For this reason, I am introducing a bill to increase the gas guzzler excise tax and to raise gradually the mileage standard.

The last few years have seen unprecedented increases in profits for the auotombile industry, profits that have been largely diverted from research and development to nonautomotive investments. If mechanical engineering students can develop a stunt vehicle that gets almost 2,000 miles per gallon, it does not seem unduly onorous to encourage manufacturers to devote resources toward development of a car that would meet a fuel efficiency standard of 27.5 miles per gallon. An increase from 22.5 miles per gallon to 27.5 miles per gallon would save the individual consumer about $160 per year at the gas pump, would greatly reduce our national dependence on foreign oil, and would help reduce our unacceptable trade deficit.

Another benefit of increased fuel efficiency is safety. Between 1975 and 1987, concurrent with the increase in fuel efficiency, the national fatality rate dropped from 3.45 per million miles traveled to 2.55. This represents more than 17,000 lives per year. Claims that lighter weight, fuel efficient cars are not safe were definitively disproved by the Department of Transportation's 35 miles per gallon frontal crash tests. These tests demonstrated that fuel-efficient subcompacts such as the Chevrolet Nova at 2,580 pounds provided significantly more protection from potentially fatal head injury to the passenger than the 4,120-pound Chevrolet Caprice.

I ask my colleagues to join me in planning for the future, a future of decreased dependence on imported oil and increased safety for automobile travelers.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. RAY (at the request of Mr. FOLEY), for today and the balance of the week, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. LIGHTFOOT) to revise and extend his remarks and include extraneous material:)

Mr. FISH, for 30 minutes, today.

Mr. BURTON of Indiana, for 5 minutes, today.

Mr. BURTON of Indiana, for 60 minutes, on June 22.

Mr. DORNAN of California, for 5 minutes, on June 22.

(The following Members (at the request of Mr. OWENS of New York) to revise and extend their remarks and include extraneous material:)

Mr. HUTTO, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. MACKAY, for 5 minutes, today.

Mr. DYMALLY, for 60 minutes, on June 22.

Mr. DYMALLY, for 60 minutes, on June 23.

Mr. DINGELL, for 60 minutes, on June 27.

Mr. DINGELL, for 60 minutes, on June 28.

Mr. DINGELL, for 60 minutes, on June 29.

Mr. DINGELL, for 60 minutes, on June 30.

(The following Members (at the request of Mr. CRAIG) to revise and extend their remarks and include extraneous material:)

Mr. STARK, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. RAHALL, and to include extraneous material notwithstanding the fact that it exceeds two pages and is estimated by the Public Printer to cost $3,146.

(The following Members (at the request of Mr. LIGHTFOOT) and to include extraneous matter:)

(The following Members (at the request of Mr. OWENS of New York) and to include extraneous matter:)

Mr. GUARINI.
Mr. LAFALCE.
Mr. SKELTON.
Mr. DINGELL.
Mr. HAMILTON.
Mr. WILLIAMS.
Mr. LIPINSKI.
Mr. AUCOIN.
Mr. LOWRY of Washington.
Mr. ANDREWS.
Mr. LELAND.
Mr. LEHMAN of Florida.
Mr. LANTOS.
Mr. KLECZKA.
Mr. FUSTER.
Mr. FASCELL.
Mr. TALLON.
Mr. ROE.
Mr. ACKERMAN.
Mr. KOLTER.
Mr. OBERSTAR.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2485. An act to make minor substantive and technical amendments to title 18, United States Code, and for other purposes; to the Committee on the Judiciary.

S. Con Res. 121. Concurrent resolution to commemorate the 50th anniversary of the Javits-Wagner-O'Day Act; to the Committee on Post Office and Civil Service.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 1901. An act to designate the Federal building located at 660 Las Vegas Boulevard in Las Vegas, NV, as the "Alan Bible Federal Building," and

S. 1960. An act to designate the Federal building located at 215 North 17th Street in Omaha, NE, as the "Edward Zorinsky Federal Building."

ADJOURNMENT

Mr. CRAIG. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 50 minutes p.m.), the House adjourned until tomorrow, Wednesday, June 22, 1988, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

3840. A letter from the Chairman, National Labor Relations Board, transmitting the Board's 50th annual report, pursuant to 29 U.S.C. 154(c); to the Committee on Education and Labor.

3841. A letter from the Director, Defense Security Assistance Agency, transmitting a copy of the agreement signed by the United States Government and the Government of Israel concerning the pricing of military training, pursuant to 22 U.S.C. 2761(g); to the Committee on Foreign Affairs.

3842. A letter from the Assistant Secretary of State, Legislative Affairs, transmitting copies of the original report of political contributions by Carl C. Cundiff, of Nevada, Ambassador Extraordinary and Plenipotentiary-designate to the Republic of Niger, and members of his family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

3843. A letter from the Executive Secretary, Federal Deposit Insurance Corporation, transmitting notification of an altered Federal records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

3844. A letter from the Special Counsel, Merit Systems Protection Board, transmitting the findings and recommendations of the Secretary of Health and Human Services investigation at the Food and Drug Administration, Center for Veterinary Medicine, pursuant to 5 U.S.C. 1206(b)(5)(A); to the Committee on Post Office and Civil Service.

3845. A letter from the Special Counsel, Merit Systems Protection Board, transmitting the findings and conclusions of the Secretary of the Navy's investigation at the Mare Island Naval Shipyard, Vallejo, CA, pursuant to 5 U.S.C. 1206(b)(5)(A); to the Committee on Post Office and Civil Service.

3846. A letter from the Secretary of Commerce, transmitting an amended draft of proposed legislation to authorize appropriations for carrying out the National Climate Program for fiscal years 1988 and 1989; proposed original draft submitted March 16, 1987 (Ex. Com. No. 898), pursuant to 31 U.S.C. 1110; to the Committee on Science, Space, and Technology.

3847. A letter from the Assistant Secretary (Tax Policy), Department of the Treasury, transmitting a report on the reduced rate of fuels taxes for taxicabs, pursuant to Public Law 98-369, section 935 (98 Stat. 1010); to the Committee on Ways and Means.

2848. A letter from the Secretary of Housing and Urban Development, transmitting the Department's report on its participation in the systematic alien verification for entitlements system, pursuant to 42 US.C. 1320b-7 note; jointly, to the Committees on the Judiciary and Banking, Finance and Urban Affairs.

3849. A letter from the Secretary of Commerce, transmitting an amended draft of proposed legislation to amend title II of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, to authorize appropriations for fiscal years 1988 and 1989; proposed original draft transmitted March 4, 1987 (Ex. Com. No. 753), pursuant to 31 U.S.C. 1110; jointly, to the Committees on Merchant Marine and Fisheries and Science, Space, and Technology.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DERRICK: Committee on Rules. House Resolution 477. Resolution providing for the consideration of H.R. 1158, a bill to amend title VIII of the Act commonly called the Civil Rights Act of 1968, to revise the procedures for the enforcement of fair housing, and for other purposes (Rep. 100-714). Referred to the House Calendar.

Mr. FROST: Committee on Rules. House Resolution 478. Resolution waiving certain points of order against consideration of H.R. 4800, a bill making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1989, and for other purposes (Rep. 100-715). Referred to the House Calendar.

Mr. ST GERMAIN: Committee on Banking, Finance and Urban Affairs. H.R. 4853. A bill to amend title 31, United States Code, to establish new requirements and procedures to combat money laundering, and for other purposes (Rep. 100-716). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 3680. A bill to revoke certain public land orders, transfer certain public lands, and for other purposes; with an amendment; referred to the Committee on Agriculture for a period ending not later than July 29, 1988, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(a), rule X (Rep. 100-717, Pt. 1). Order to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HUGHES (for himself and Mr. MCCOLLUM):

H.R. 4868. A bill to improve drug enforcement; jointly, to the Committees on the Judiciary and Energy and Commerce.

By Mr. ANNUNZIO:

H.R. 4869. A bill to amend title 31, United States Code, to prohibit fraud and misrepresentations in connection with the sale of numismatic items and the reproduction of numismatic items, and for other purposes; jointly, to the Committees on Banking, Finance and Urban Affairs and the Judiciary.

By Mr. GEJDENSON (for himself and Mr. MONTGOMERY):

H.R. 4870. A bill to authorize the Vietnam Women's Memorial Project, Inc., to construct a statue at the Vietnam Veterans Memorial in honor and recognition of the women of the United States who served in the Vietnam conflict; to the Committee on House Administration.

By Mr. GEKAS:

H.R. 4871. A bill to amend title 18 of the United States Code to create a criminal offense for public corruption; to the Committee on the Judiciary.

By Mr. HAWKINS:

H.R. 4872. A bill to establish education and prevention programs relating to the illicit use of drugs by youth; to the Committee on Education and Labor.

By Mr. JOHNSON of South Dakota:

H.R. 4873. A bill to require the Secretary of the Treasury to mint coins in commemoration of the golden anniversary of the Mount Rushmore National Memorial; to the Committee on Banking, Finance and Urban Affairs.

H.R. 4874. A bill to amend the Agricultural Act of 1949 to limit the quantity of milk protein products that may be imported into the United States; to the Committee on Ways and Means.

By Mr. LEACH of Iowa:

H.R. 4875. A bill to require the Federal Home Loan Bank Board to prescribe regulations to prohibit any increase in the amount of total assets of thrift institutions with negative net worth; to the Committee on Banking, Finance and Urban Affairs.

By Mr. McEWEN:

H.R. 4876. A bill to authorize and direct the Secretary of Agriculture to waive the collection and refund of advance deficiency payments made for the 1988 crops of wheat and feed grains because of drought, flood or other natural disaster, or other conditions beyond the control of the producers in an area where the producers' crops were located and were substantially affected by it; to the Committee on Agriculture.

H.R. 4877. A bill to authorize and direct the Secretary of Agriculture to make advance deficiency payments for the 1987 crop of corn and sorghum to producers in July 1988, because of the severe drought occurring across the United States; to the Committee on Agriculture.

H.R. 4878. A bill to allow producers of the 1988 crops of wheat and feed grains to be eligible for disaster payments regardless of whether crop insurance was available to such producers; to the Committee on Agriculture.

By Mr. PARRIS (for himself, Mr. BARNARD, Mr. DREIER of California, Mr. NEAL, Mr. PRICE of North Carolina, and Mrs. SAIKI):

H.R. 4879. A bill to amend the Depository Institution Management Interlocks Act to revise the manner in which the service of directors of depository institutions and depository holding companies are regulated, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. PETRI (for himself, Mr. BALLENGER, Mr. GRANDY, Mr. LEWIS of California, Mrs. MARTIN of Illinois, Mr. LATTA, Mr. DENNY SMITH, Mrs. JOHNSON of Connecticut, Mr. HOUGHTON, Mr. BUECHNER, Mr. DONALD E. LUKEN, Mr. HOPKINS, Mr. PORTER, Mr. WELDON, Mr. SENSENBRENNER, Mrs. VUCANOVICH, Mr. LAGOMARSINO, Mr. GILMAN, Mr. BARTON of Texas, Mr. DORNAN of California, Mr. GUNDERSON, and Mr. BLILEY):

H.R. 4880. A bill to amend the Congressional Budget Act of 1974 to strengthen and ensure the political neutrality of the Congressional Budget Office; jointly, to the Committees on Government Operations and Rules.

By Mr. SOLOMON:

H.R. 4881. A bill to prohibit the establishment of parking fees at Arlington National Cemetery; to the Committee on Veterans' Affairs.

By Mr. STARK:

H.R. 4882. A bill to amend the Internal Revenue Code of 1986 to increase the fuel economy standards used in determining the gas guzzler tax and to increase the rates of such tax; to the Committee on Ways and Means.

By Mr. STUDDS (for himself, Mr. MOAKLEY, Mr. CONTE, Mr. MAVROULES, Mr. ATKINS, Mr. MARKEY, Mr. DONNELLY, and Mr. FRANK):

H.R. 4883. A bill to amend the Federal Water Pollution Control Act to include Massachusetts Bay, MA, in the National Estuary Program; jointly, to the Committees on Public Works and Transportation and Merchant Marine and Fisheries.

By Mr. WILLIAMS:

H.R. 4884. A bill to ensure that certain retirement benefit payments are delivered early when the regular delivery date occurs on a Saturday, Sunday, or legal holiday; jointly, to the Committees on Energy and Commerce, Armed Services, Post Office and Civil Service, Education and Labor, Foreign Affairs, and the Permanent Select Committee on Intelligence.

H.R. 4885. A bill to amend title XVIII of the Social Security Act to provide the same limitation on increases in deductions for Medicare part B premiums from railroad retirement annuities as currently applies to Medicare part B deductions from Social Security monthly benefits, so that the amount of such an increase in a given year cannot exceed the amount of the cost-of-living increase in the annuity; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. DE LA GARZA (for himself, Mr. BUSTAMANTE, Mr. COLEMAN of Texas, Mr. SKEEN, Mr. HUNTER, Mr. ORTIZ, Mr. KOLBE, and Mr. UDALL):

H.J. Res. 593. Joint resolution designating March 1, 1989, as "International Boundary and Water Commission Recognition Day"; to the Committee on Post Office and Civil Service.

By Mr. PANETTA (for himself and Mr. SHUMWAY):

H.J. Res. 594. Joint resolution designating October 20, 1988, as "Leyte Landing Day"; to the Committee on Post Office and Civil Service.

By Mr. LAGOMARSINO (for himself, Mrs. SAIKI, and Mr. SUNIA):

H. Con. Res. 319. Concurrent resolution commending His Majesty King Taufa' ahau Tupou IV, the Parliament, and the people of the Kingdom of Tonga on the occasion of the centennial of the Treaty of Amity, Commerce, and Navigation between the United States and the Kingdom of Tonga and the 21st anniversary of the coronation of, and 70th birthday of, His Majesty King Taufa' ahau Tupou IV; to the Committee on Foreign Affairs.

By Mr. LELAND (for himself, Mr. LOWRY of Washington, Mr. FAUNTROY, Mr. CROCKETT, Mr. MRAZEK, and Mr. HALL of Ohio):

H. Con. Res. 320. Concurrent resolution expressing the sense of the Congress that the Secretary of the Treasury should not regulate the donation of articles intended to relieve human suffering in Nicaragua, except as provided in subparagraphs (A), (B), and (C) of section 203(b) (2) of the International Emergency Economic Powers Act; to the Committee on Foreign Affairs.

By Mr. ROSTENKOWSKI:

H. Res. 479. Resolution returning to the Senate the bill S. 727; considered and agreed to.

By Mr. SOLARZ (for himself, Mr. LEACH of Iowa, Mr. ATKINS, Mr. SUNIA, Mr. TORRICELLI, and Mr. BLAZ):

H. Res. 480. Resolution to encourage the establishment of genuine democracy in Pakistan; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII,

423. The SPEAKER presented a memorial of the Assembly of the State of New Jersey, relative to the FCC providing a sufficient number of radio frequencies for the exclusive use of public safety; to the Committee on Energy and Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. FAUNTROY:

H.R. 4886. A bill for the relief of Jenny K. Johnson, Ph.D., to the Committee on the Judiciary.

By Mr. RICHARDSON:

H.R. 4887. A bill for the relief of Juana del Carmen Villalobos de Bruno; to the Committee on the Judiciary.

H. Con. Res. 321. Concurrent resolution honoring the Unser family for its accomplishments in the sport of auto racing; to the Committee on Post Office and Civil Service.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 457: Mr. RINALDO.

H.R. 551: Mr. DAVIS of Illinois.

H.R. 592: Mr. HARRIS, Mr. NOWAK, Mr. VANDER JAGT, Mr. BURTON of Indiana, and Mr. CRAIG.

H.R. 778: Mr. HERTEL and Mr. CARPER.

H.R. 1566: Mr. SCHUETTE.

H.R. 1638: Mr. LOWRY of Washington and Mr. COOPER.

H.R. 1645: Mr. ANNUNZIO, Mr. ANTHONY, Mr. ASPIN, Mr. AUCOIN, Mr. BARNARD, Mr. BERMAN, Mr. BEVILL, Mr. BOLAND, Mr. BOUCHER, Mr. BOSCO, Mr. BRENNAN, Mr. BRUCE, Mr. CAMPBELL, Mr. CARPER, Mr. CARR, Mr. CLARKE, Mr. CLEMENT, Mr. CLINGER, Mr. COELHO, Mr. COLEMAN of Texas, Mr. COOPER, Mr. COYNE, Mr. CROCKETT, Mr. DOWDY of Mississippi, Mr. DURBIN, Mr. FEIGHAN, Mr. FLORIO, Mr. FUSTER, Mr. GEJDENSON, Mr. GEPHARDT, Mr. GUNDERSON, Mr. HEFNER, Mr. HOCHBRUECKNER, Mr. HUTTO, Mr. JONES of North Carolina, Mr. KENNEDY, Mr. KLECZKA, Mr. LAFALCE, Mrs. LLOYD, Mr. MANTON, Mr. MCHUGH, Mr. MOAKLEY, Mr. MOLLOHAN, Mr. MRAZEK, Mr. NAGLE, Mr. ORTIZ, Mr. OWENS of Utah, Mr. PENNY, Mr. PEPPER, Mr. PRICE of North Carolina, Mr. PURSELL, Mr. ROBINSON, Mr. ROSE, Mr. RUSSO, Mr. SKELTON, Mr. SLATTERY, Ms. SLAUGHTER of New York, Mr. SOLARZ, Mr. SPRATT, Mr. STALLINGS, Mr. STENHOLM, Mr. TALLON, Mr. TAUKE, Mr. TRAFICANT, Mr. TRAXLER, Mr. VALENTINE, Mrs. VUCANOVICH, Mr. WELDON, Mr. WISE, Mr. WOLPE, and Mr. WYDEN.

H.R. 2624: Mr. RINALDO.

H.R. 2776: Mr. DONALD E. LUKENS, Mr. BURTON of Indiana, Mr. GUNDERSON, and Mrs. MARTIN of Illinois.

H.R. 2854: Mr. BERMAN.

H.R. 3006: Mr. RICHARDSON.

H.R. 3130: Mr. GEJDENSON and Mr. DWYER of New Jersey.

H.R. 3132: Mr. MOLINARI.

H.R. 3199: Mr. RINALDO.

H.R. 3221: Mr. BLAZ, Mr. LOWRY of Washington, Mr. MOAKLEY, Mr. MOODY, Mr. RICHARDSON, and Mr. SHAYS.

H.R. 3250: Mr. BATEMAN.

H.R. 3259: Mr. FORD of Tennessee, Mr. RANGEL, and Mr. OWENS of New York.

H.R. 3314: Mr. LUNGREN and Mrs. JOHNSON of Connecticut.

H.R. 3343: Mr. SIKORSKI.

H.R. 3455: Mr. DONALD E. LUKENS, Mr. DENNY SMITH, Mr. HYDE, Mr. BALLENGER, Mr. CRAIG, Mr. RIDGE, Mrs. ROUKEMA, Mr. HOUGHTON, Mr. HASTERT, Mr. DORNAN of California, Mr. GUNDERSON, Mr. SKEEN, Mr. GEKAS, Mr. MILLER of Washington, Mr. BUECHNER, Mr. HUNTER, and Mr. PORTER.

H.R. 3560: Mr. MANTON.

H.R. 3624: Mr. BRENNAN.

H.R. 3658: Mr. BRENNAN, Mrs. JOHNSON of Connecticut, Mr. MILLER of Washington, Mr. STUDDS, Mr. FOGLIETTA, Mr. PACKARD, Mr. SHUMWAY, Mr. STARK, and Mr. VISCLOSKY.

H.R. 3764: Mr. PURSELL and Mr. MORRISON of Connecticut.

H.R. 3766: Mr. CLINGER.

H.R. 3840: Mr. WOLPE.

H.R. 3978: Mrs. COLLINS, Mr. LEHMAN of Florida, Ms. PELOSI, Mr. PORTER, Mr. RANGEL, and Mr. EDWARDS of California.

H.R. 4032: Mr. BOULTER.

H.R. 4101: Mr. LOWRY of Washington.

H.R. 4111: Mr. KASTENMEIER and Mr. RIDGE.

H.R. 4189: Mr. ST GERMAIN and Mr. JEFFORDS.

H.R. 4192: Mr. MAZZOLI, Mr. CRAIG, Mr. DELAY, Mr. JEFFORDS, Mrs. SAIKI, Mr. DONALD E. LUKENS, and Mr. GRADISON.

H.R. 4226: Mr. MAVROULES, Mr. JEFFORDS, Mr. SKELTON, Mr. ACKERMAN, Mr. VISCLOSKY, Mr. HUGHES, Mr. RIDGE, Mr. VENTO, and Mr. YATES.

H.R. 4230: Mr. FLAKE, Mr. CLEMENT, Mr. MAVROULES, Mr. SHAYS, Mr. MARTIN of New York, and Mr. SWIFT.

H.R. 4277: Mr. TOWNS, Mr. SCHUMER, and Mr. WYDEN.

H.R. 4288: Mr. WELDON, Mr. WOLF, Mr. COYNE, Mrs. LLOYD, Mr. SENSENBRENNER, Mr. NEAL, Mr. DONALD E. LUKENS, Mr. CHANDLER, Mr. TAYLOR, Mr. ROGERS, Mr. LIPINSKI, Mrs. BENTLEY, Mr. GOODLING, Mr. LIVINGSTON, Mr. MYERS of Indiana, Mr. BUNNING, Mr. ROSTENKOWSKI, Mr. UPTON, Mr. MCGRATH, Mr. WHITTEN, Mr. HAMMERSCHMIDT, Mrs. MEYERS of Kansas, Mrs. PATTERSON, Mr. SKEEN, Mr. ANDERSON, Mr. GRAY of Illinois, Mr. DE LUGO, and Mr. PERKINS.

H.R. 4302: Mr. PACKARD, Mr. HARRIS, Mr. OXLEY, Mr. SHAW, Mr. BILIRAKIS, and Mr. FAWELL.

H.R. 4410: Mr. ECKART and Mr. SAWYER.

H.R. 4427: Mr. ACKERMAN, Mr. ATKINS, Mr. BIAGGI, Mr. BEILENSON, Mr. BORSKI, Mr. CONYERS, Mr. COYNE, Mr. DEFAZIO, Mr. DIXON, Mr. DOWNEY of New York, Mr. EDWARDS of California, Mr. FAUNTROY, Mr. FAZIO, Mr. HAYES of Illinois, Mr. KASTENMEIER, Mr. KOSTMAYER, Mr. LEVIN of Michigan, Mr. LEVINE of California, Mr. LOWRY of Washington, Mr. MARTINEZ, Mr. MOAKLEY, Mr. MOODY, Mr. MRAZEK, Mr. NEAL, Mr. OWENS of New York, Ms. PELOSI, Mr. ROYBAL, Mr. SAWYER, Mr. STARK, Mr. SYNAR, Mr. TORRES, Mr. UDALL, Mr. WAXMAN, Mr. WEISS, Mr. WOLPE, and Mr. YATES.

H.R. 4441: Mr. DE LUGO, Mrs. PATTERSON, and Mr. FOGLIETTA.

H.R. 4498: Mr. ACKERMAN, Mr. LOWRY of Washington, Mr. MILLER of Washington, and Mr. DONNELLY.

H.R. 4618: Mr. WISE, Mr. DANNEMEYER, Mr. BROWN of California, Mr. LANCASTER, Mr. BONIOR of Michigan, Mr. SLATTERY, Mr. SUNIA, and Mr. LIPINSKI.

H.R. 4691: Mrs. MARTIN of Illinois, Mr. JONTZ, Mr. WELDON, Mr. SHAW, Mr. STALLINGS, and Mr. SCHUMER.

H.R. 4743: Mr. FAZIO and Mr. FLORIO.

H.R. 4748: Mr. BATES.

H.R. 4760: Mr. LAGOMARSINO, Mr. FOGLIETTA, Mr. LANCASTER, and Mrs. MARTIN of Illinois.

H.R. 4796: Mr. SOLOMON, Mr. STUMP, and Mr. LAGOMARSINO.

H.R. 4823: Mr. DORGAN of North Dakota, Mr. JOHNSON of South Dakota, and Mr. HOPKINS.

H.R. 4829: Mr. HOYER, Mr. MFUME, Mrs. BENTLEY, Mr. DYSON, Mrs. BYRON, Mr. CARDIN, Mr. MATSUI, Mrs. JOHNSON of Connecticut, Mr. FAUNTROY, Mr. FRANK, Mr. ROBINSON, Mr. LANCASTER, and Mr. LAGOMARSINO.

H.R. 4833: Mr. SLATTERY, Mr. CLARKE, and Mr. BATES.

H.R. 4834: Mr. MCCURDY and Mr. SYNAR.

H.J. Res. 50: Mr. FORD of Tennessee, Mr. BONKER, and Mr. BOLAND.

H.J. Res. 152: Mr. LEWIS of Georgia, Mr. KASTENMEIER, Mr. MCDADE, Ms. OAKAR, Mr. MACKAY, Mr. KLECZKA, Mr. SMITH of Iowa, Mr. BROWN of Colorado, Mr. DELLUMS, Mr. KASICH, Mr. MILLER of California, Mr. MORRISON of Washington, Mr. RICHARDSON, Mr. WEISS, Mr. CARPER, Mr. BRUCE, Mr. ANDER-

SON, Mr. TRAFICANT, Mr. MATSUI, and Mr. SUNIA.

H.J. Res. 330: Mr. HOCHBRUECKNER, Mr. CHANDLER, Mr. WOLPE, and Mr. SAWYER.

H.J. Res. 390: Mr. TORRES and Mr. MACK.

H.J. Res. 403: Mr. BILIRAKIS, Mr. BOEHLERT, Mr. BURTON of Indiana, Mr. CARPER, Mr. CONYERS, Mr. FEIGHAN, Mr. FISH, Mr. FOGLIETTA, Mr. HYDE, Ms. KAPTUR, Mr. KENNEDY, Mr. MILLER of Washington, Mrs. MORELLA, Mr. RINALDO, Mrs. SCHROEDER, Mr. SOLOMON, and Mr. TRAFICANT.

H.J. Res. 453: Mr. CHAPMAN, Mr. WALGREN, Mr. GINGRICH, Mr. CHENEY, Mr. CLINGER, Mr. SKAGGS, Mr. CLAY, Mr. FROST, and Ms. PELOSI.

H.J. Res. 467: Mrs. BENTLEY.

H.J. Res. 540: Mr. WEISS and Mr. BRENNAN.

H.J. 543: Mr. MOORHEAD, Mr. THOMAS A. LUKEN, Mr. ATKINS, Mr. SMITH of New Jersey, Mr. HAMMERSCHMIDT, and Mr. JOHNSON of South Dakota.

H.J. Res. 575: Mr. ANDERSON, Mr. BENNETT, Mrs. BENTLEY, Mr. BERMAN, Mr. BEVILL, Mr. BIAGGI, Mr. BONKER, Mr. BOSCO, Mr. BRYANT, Mr. CALLAHAN, Mr. CARPER, Mr. CHANDLER, Mr. CHAPMAN, Mr. COURTER, Mr. DAVIS of Michigan, Mr. DEFAZIO, Mr. DE LA GARZA, Mr. DYMALLY, Mr. EDWARDS of Oklahoma, Mr. EMERSON, Mr. EVANS, Mr. FAUNTROY, Mr. FEIGHAN, Mr. FOLEY, Mr. FRENZEL, Mr. GRAY of Illinois, Mr. HAMMERSCHMIDT, Mr. HARRIS, Mr. HUNTER, Mr. HYDE, Mrs. JOHNSON of Connecticut, Mr. JOHNSON of South Dakota, Mr. KASTENMEIER, Mr. KOLTER, Mr. LANCASTER, Mr. LANTOS, Mr. LENT, Mr. LEWIS of California, Mr. LIVINGSTON, Mr. LOWERY of California, Mr. MCDADE, Mr. MCHUGH, Mr. MARTIN of New York, Mr. MATSUI, Mr. MILLER of Ohio, Mr. MILLER of California, Mr. MINETA, Mr. MURPHY, Mr. OBERSTAR, Mr. OWENS of Utah, Mr. PACKARD, Mr. PORTER, Mr. RANGEL, Mr. RITTER, Mr. ROBERTS, Mr. ROWLAND of Connecticut, Mr. SAVAGE, Mr. SMITH of Florida, Mr. SOLOMON, Mr. SUNIA, Mr. TALLON, Mr. TAYLOR, Mr. VENTO, Mr. WALGREN, and Mr. YOUNG of Alaska.

H. Con. Res. 28: Mr. WALGREN and Ms. PELOSI.

H. Con. Res. 254: Mr. DE LUGO and Mr. PACKARD.

H. Con. Res. 273: Mr. FAUNTROY.

H. Con. Res. 276: Mr. BONKER, Mr. OLIN, Mr. CLEMENT, Mrs. JOHNSON of Connecticut, Mr. RHODES, Mr. JOHNSON of South Dakota, Mr. KOLBE, Mr. CHANDLER, Mr. JEFFORDS, Mr. HYDE, Mr. WALKER, Mr. CONTE, Mr. HAWKINS, Mr. SMITH of Iowa, Mr. LEATH of Texas, Mr. SMITH of New Jersey, Mr. THOMAS of California, Mr. HUNTER, Mr. DICKINSON, Mr. BADHAM, Mr. RIDGE, Mr. MCDADE, Mr. GIBBONS, Mr. ARMEY, Mr. BROWN of Colorado, Mr. WEBER, Mr. FRENZEL, Mr. BARTLETT, Mr. RANGEL, and Mr. PICKLE.

H. Con. Res. 282: Mr. TRAXLER, Mr. HASTERT, Mr. NIELSON of Utah, Mr. EVANS, and Mr. DONALD E. LUKENS.

H. Con. Res. 288: Mr. SUNIA, Mr. BADHAM, Mr. LANTOS, Mr. LIPINSKI, Mr. PETRI, Mr. FISH, and Mr. STRATTON.

H. Con. Res. 303: Mr. BARTON of Texas, Mr. PACKARD, Mr. WEBER, Mr. BEREUTER, Mr. BUSTAMANTE, and Mrs. MORELLA.

H. Con. Res. 310: Mr. GILMAN, Mr. HAMILTON, Mr. HOYER, Mr. RINALDO, Mr. WYDEN, and Mr. WORTLEY.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 3314: Mr. GOODLING.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

187. By the SPEAKER: Petition of town of Lanesborough, MA, relative to antisatellite weapons; to the Committee on Armed Services.

188. Also, petition of the U.S. Conference of Mayors, Washington, DC, relative to hunger and homelessness; to the Committee on Banking, Finance and Urban Affairs.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1158

By Mr. DANNEMEYER:

—On page 2, between lines 23 and 24, insert the following:

"Nothing in this title shall be construed—

"(A) to require any person or group of persons selling, renting, leasing, or otherwise providing any dwelling to exercise a higher degree of care for a person with a handicap than for a person who does not have a handicap; or

"(B) to relieve any person or group of persons of any obligation generally imposed on all persons, regardless of any handicap, in any written lease, rental agreement, or contract of purchase or sale.".

—On page 2, line 23, insert the following new language: "Notwithstanding any other provision of law, the term 'individual with handicap' does not include any individual who has a contagious, infectious or communicable disease whether or not such disease causes physical or mental impairment during the period of such individual's contagion".

—On page 2, line 24, insert the following:

"(2) 'Handicap' does not mean any current inpairment that consists of alcoholism.".

—On page 2, following line 24, insert the following new language: "Such term does not include any current impairment that consists of alcohol abuse, or any infectious, contagious or communicable disease whether or not such disease causes a physical or mental impairment during the period of contagion, or any other impairment which would be a direct threat to the property, health, or safety of others.".

—On page 5, line 7, strike "full enjoyment of" and insert in lieu thereof "ready access to";

On page 5, line 11, strike "equal opportunity to use and enjoy" and insert in lieu thereof "ready access to the use and enjoyment of".

—On page 5, line 7, after "premises" insert the following: ", *Provided, however,* That in the case of a rental, no modification need be permitted, unless the renter first agrees to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted".

—On page 10, strike line 25 through page 12, line 18, and insert in lieu thereof "by section 812(g).".

By Mr. GEKAS:

—Page 19, line 7, delete all after "Secretary" through "subsection" on line 11 and insert in lieu thereof the following: "shall refer the matter to the Attorney General, with a request that a civil action be commenced under section 814(b)".

—On page 37, line 12, after "section" insert "810(e) or".

By Mr. SENSENBRENNER:

—On page 28, line 12, delete "$10,000" and insert in lieu thereof "$2500".

On page 28, line 15, delete "$25,000" and insert in lieu thereof "$5000".

On page 28, line 20, delete "$50,000" and insert in lieu thereof "$10,000".

By Mr. SHAW:

—Page 3, strike out line 6 and all that follows through line 13, and redesignate succeeding subsections accordingly.

Page 7, line 8, strike out "(1)".

Page 7, line 10, strike out "familial status,".

Page 7, strike out line 12 and all that follows through line 14.

Page 7, line 24, strike out "familial status,".

Page 8, line 15, strike out "handicap, or familial status" and insert in lieu thereof ", or handicap".

Page 8, line 20, strike out "(1)".

Page 8, beginning in line 23, strike out "Nor does" and all that follows through line 11 on page 9.

Page 37, beginning in line 11, strike out "familial status" and all that follows through "Act)," in line 10.

—Page 38, after line 20, insert the following:

SEC. 13. STUDY OF DISCRIMINATION BASED ON FAMILIAL STATUS.

(a) STUDY.—The United States Commission on Civil Rights shall conduct a study of the nature and extent of housing discrimination based on familial status. Such Commission shall report to Congress the results of such study, together with any recommendations for legislation, not later than 3 years after the date of the enactment of this Act.

(b) DEFINITION.—As used in this section, the term "familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person, with the written permission of such parent or other person.

H.R. 4800

By Mr. GONZALEZ:

—Page 3, line 18, strike the semicolon and all that follows through "years" on line 22.

Page 3, strike line 24 and all that follows through "months" on page 4, line 4.

—Page 6, line 2, strike "$478,422,000" and insert "$518,422,000".

Page 7, line 14, strike "$5,400,000" and insert "$7,000,000".

Page 8, line 17, insert before "all" the following: "$30,000,000 (to be available only for assistance for capital improvements in accordance with section 201 of such Amendments), together with".

Page 9, line 5, strike "$65,000,000" and insert "$113,400,000".

Page 9, line 11, strike "$85,000,000" and insert "$95,000,000".

Page 9, after line 12, insert the following new item:

SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS

For supplemental assistance for facilities to assist the homeless, in accordance with subtitle D of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11391 et seq.), $25,000,000, to remain available until expended.

Page 12, after line 24, insert the following new item:

URBAN DEVELOPMENT ACTION GRANTS

For grants to carry out urban development action grant programs authorized in section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318), $150,000,000, shall remain available until expended.

Section 119(s) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(s)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end the following new paragraph:

"(2) The maximum aggregate amount that the Secretary may approve for any 1 city or urban county in any 1 competition for grants under this section is $10,000,000, unless such limit may be exceeded without preventing the Secretary from approving grants for each eligible city or urban county for which the aggregate amount of funds requested for eligible projects is not more than $10,000,000.".

Page 21, line 19, strike "$1,950,000,000" and insert "$2,020,000,000".

Page 21, line 20, strike "$934,000,000" and insert "$969,000,000".

Page 21, line 23, strike "$934,000,000" and insert "$969,000,000".

Page 26, line 22, strike "$4,191,700,000" and insert "$3,791,700,000".

Page 37, line 6, strike "$10,567,546,000" and insert "$10,592,546,000".

Page 37, line 7, strike "$5,000,000" and insert "$10,000,000".

Page 37, line 9, insert after the colon the following: *Provided further,* That $20,000,000 of the foregoing amount shall be available for (1) converting to domiciliary care beds underused space located in facilities under the jurisdiction of the Administrator of Veterans' Affairs in urban areas in which there are a significant number of homeless veterans; and (2) furnishing domiciliary care in such beds to eligible veterans (primarily homeless veterans) who are in need of such care:

—Page 8, line 17, insert before "all" the following: "$50,000,000 (to be available only for assistance for capital improvements in accordance with section 201 of such Amendments), together with".

Page 9, line 5, strike "$65,000,000" and insert "$120,000,000".

Page 9, line 11, strike "$85,000,000" and insert "$95,000,000".

Page 9, after line 12, insert the following new item:

"SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS

"For supplemental assistance for facilities to assist the homeless, in accordance with subtitle D of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11391 et seq.), $25,000,000, to remain available until expended."

Page 25, line 12, strike "$114,000,000" and insert "$124,000,000".

Page 26, line 22, strike "$4,191,700,000" and insert "$4,041,700,000".

—Page 2, line 24, strike "$389,574,000 shall be for" and insert the following: "$661,024,000 shall be for assistance pursuant to 15-year contracts under".

Page 3, line 7, strike "$1,463,825,280" and insert "$1,192,375,280".

EXTENSIONS OF REMARKS

ADMINISTRATION SPEECH ON THE MIDDLE EAST

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. HAMILTON. Mr. Speaker, Secretary of State Shultz has made four trips to the Middle East this year seeking to advance the Arab-Israeli peace process. I commend the Secretary for his efforts. His initiative is an important expression of continuing American interests in a Middle East peace settlement.

Secretary Shultz has been accompanied on each of his trips by Richard W. Murphy, Assistant Secretary of State for Near East and South Asian Affairs. Mr. Murphy spoke in New York on June 14, 1988, on the status of efforts to restart the peace process in the Middle East, and his remarks are an articulate presentation of current U.S. policy.

His speech merits study, and I commend it to my colleagues. The text of Assistant Secretary Murphy's remarks follows:

ADDRESS BY RICHARD W. MURPHY

Major transformations are underway in global political and economic relations. And significant improvements are taking place in relations between the United States and the Soviet Union. Against the backdrop of potentially far-reaching changes in Soviet thinking—indeed, contributing significantly to those changes—new patterns of political dialogue are taking shape, most significantly represented by the progress achieved at the Moscow summit in stabilizing and intensifying superpower relations.

In the Middle East, however, old attitudes prevail and traditional illusions persist. Outdated concepts produce outdated actions, and result in policies which fail to meet the needs of today.

During his recent visit to the region, Secretary Shultz addressed the dichotomy between the dictates of reality and the illusions to which Arabs and Israelis cling. The Secretary argued that emerging realities—in superpower relations and, more particularly, in regional trends—require a serious rethinking by all parties.

What are some of these emerging realities in the Middle East:

DEMOGRAPHIC TRENDS

The migration of people throughout the Middle East, the ebb and flow of their movement and life cycles have shaped the fabric of the region for centuries. Today, these demographic trends pose enormous challenges for the modern nation state—straining the state's capacity to provide for its citizens and impeding social and economic development. Moreover, demographic changes, particularly when they overlap with sectarian and political conflict, can exacerbate or even cause confrontation:

With a population growth rate of 2.5 percent a year, Egypt has 1.3 million new mouths to feed each year. By the turn of the century, Egypt's population will exceed 70 million people; by 2010, its population will reach 100 million. Cairo, a city designed originally for some 1.5 million people now has a population of some 12-15 million people. Indeed, the consequences of Egypt's population boom is systemic and has placed a strain on housing, employment opportunities, social services and economic expectations.

In Lebanon, shifting population balances have contributed to the breakdown of the confessional political system and created severe local and economic dislocation. The Shia community, now estimated at roughly 40% of the Lebanese population, remains the largest and most disadvantaged of all Lebanese communal groups. This imbalance in relation to other religious groups has made large elements of the Shia community vulnerable to manipulation by Shiite Iran, which seeks to impose an Islamic Republic on all Lebanese.

In the West Bank/Gaza, changing demographic trends have created new realities. Israel's continued occupation of these territories means controlling 1.5 million Palestinian Arabs against their will—a fact which the intifadah confirms—and poses much more difficult challenges for Israel than in the past. And since the Arab population in territories controlled by Israel will outnumber the Jewish population within a generation, the challenges can only sharpen. Indeed, the occupation is a dead-end street that will guaranteed continued violence, compromise Israel's democracy and moral values, and frustrate any durable accommodation between Israel and its Arab neighbors.

ECONOMIC

On the economic front, lower oil prices and sluggish growth have affected all countries in the Middle East. Major oil producers have cut their domestic development plans and their foreign assistance. Opportunities for exporting goods and labor to these countries have diminished, resulting in a foreign exchange squeeze in Lebanon, Egypt, Jordan, Syria and the West Bank. Skilled and unskilled Arab workers in the oil producing countries have been forced to return to their own countries and remittances have dwindled, along with trade. Government-to-government grants and loans from richer to poorer Arab states have also fallen off sharply.

Israel has come through a wrenching period of economic readjustment, but there are signs of trouble. The hyperinflation of a few years ago, which dropped to a more manageable 16 percent, is now moving back up. And profoundly affecting both Israel and the occupied territories are population pressures on labor markets. In the West Bank and Gaza, population growth rates are 2½ to 3 percent per year. This exceeds the capacity to absorb manpower. The result has been substantial emigration. Income from outside the West Bank accounts for one-third of that area's GNP.

The Palestinian uprising on the West Bank has paradoxically highlighted the economic integration of Israel and the West Bank. Unpublished estimates suggest that the *intifada* will reduce the GDP of the West Bank and Gaza by 2 percent this year. The economic effects on Israel are equally profound. Israeli exports to the West Bank may have dropped by 35-50 percent. Absenteeism by Arab workers has cut the Israeli labor force by 1-2 percent. The cost to Israel could be as much as 2 percent of GNP growth, plus a hefty boost to inflation.

In the meantime, defense expenditures account for 19 percent of GNP in Israel and Jordan, 11 percent in Egypt. This compares with an average of under 5 percent for other countries in the world. The continued diversion of extraordinary material and human resources to military purposes in the Middle East will severely retard the efforts of these countries to keep pace economically and with technological and scientific change in the next century.

Economic insecurity and austerity reduce public confidence in the future and create a climate for political and religious demagoguery, This can, at its worst, lead to the sort of upheaval which has splintered Lebanon. And even if the situation is not immediately explosive, it breeds an atmosphere of caution, making it difficult for political leaders to take the bold decisions required for peace.

CHANGING ARAB-ISRAELI BATTLEFIELD

Increasing sophistication of military technology has revolutionized modern warfare and created scenarios of destruction that have dramatically raised the costs of conventional conflict.

In the Iran-Iraq war, we have witnessed use of chemical weapons and short-range ballistic missiles that have brought the war to urban areas and underscored the limitations of the concept of secure borders.

Syrian acquisition of the SS21 and other short-range ballistic missiles combined with Israel's own SRBM program has set off a potentially dangerous cycle of conflict with higher risks to both military and civilian targets.

Acquisition of chemical weapons has introduced a new element in battlefield planning and heightened danger of preemption and large-scale civilian casualties.

Saudi acquisition of the CSS-2 and Iraq's success in increasing the range of SCUD to over 300 miles and top-priority programs in other ME countries to develop or acquire longer-range missiles have aggravated the dangers and heightened the risks caused by widespread missile proliferation throughout the region.

EXTREMISM

The Middle East is a region of passionate beliefs and powerful ideas. All too often these ideas—both secular and religious alike—are converted into ideologies of an extreme nature.

Islamic fundamentalism of a revolutionary and sometimes violent nature has roots throughout the region. In Tunisia, Egypt, Lebanon and Syria, we have witnessed the emergence of small extremist groups which have challenged the state and spread their militant message through terrorism.

Terrorist organizations espousing radical ideologies, or in the case of the Abu Nidal organization, a nihilist philosophy, contrive

to attack moderate forces everywhere in an effort to prevent accommodation and resolution of the conflicts.

In Israel, Jewish extremists proclaim that there can be no compromsie with the Arabs and no accommodation based on any territorial compromise. Some even urge the transfer or expulsion of Palestinian Arabs.

WINNER-TAKE-ALL THINKING

Too often, parties to a conflict believe that only one side can win and that it is impossible for both sides to gain through negotiation. This thinking characterizes the Arab-Israeli conflict, particularly the Palestinian-Israeli confrontation. Israelis and Palestinians are prisoners of the past, locked into the prejudices of an historic conflict over what they perceive as absolute imperatives—territory, security, and political legitimacy. Too many persist in seeing the problem as a winner-take-all affair without an appreciation of the need for flexibility, let alone the importance of a practical negotiation.

In each case, the implications of these economic, demographic and military trends are felt in three independent, but inter-related, ways. First—and this is new—they affect the ability of countries and people to compete politically and economically in the increasingly interdependent, democratic and free market world of the late 20th Century. Second, they impose specific constraints on efforts to resolve the Arab-Israeli conflict by encouraging extremists on both sides. Third, they risk reversing the trend toward greater Arab acceptance of Israel, starting back down the road to major military confrontation sometime in the future.

The trends I just described are complicated by what Secretary Shultz has termed the propensity of the parties in the conflict to "cling to old visions and dreams as though they were immutable laws of nature." The Secretary has just returned from another round of discussions in the Middle East, and I would like to report to you on the state of play in the peace process.

As you know, the plan put forward by the United States says that negotiations between Israel and certain of its neighbors who wish to participate in the peace process should be based on United Nations Security Council resolutions 242 and 338. The plan also stipulates that, in the case of the West Bank and Gaza, negotiations should take place initially on transitional arrangements, but that these negotiations would be interlocked in time and sequence with final status talks.

Since we put this plan on the table, we have heard a number of complaints, problems and concerns about it. Two examples of reactions we have heard should suffice in explaining what we mean in asking all parties to shed illusions in favor of reality. From the PLO, we have read in the media that Resolution 242 is not sufficient for it is deficient in regard to Palestinian national rights; and the suggestion has been made that additional UN resolutions become the basis of negotiations, including Resolution 181, the partition resolution. From a strictly legal standpoint, I think I understand what 181 does for the PLO case; it puts the UN General Assembly on record in support of a Palestinian state west of the Jordan river. But can the PLO realistically believe that the clock can be turned back to 1947 and that we start negotiations on the basis of Resolution 181? This is an illusion that simply will not lead to negotiations and a peaceful settlement of the Arab-Israeli conflict.

On the other hand, some Israelis have argued that the timetable and inter-lock mechanism are unacceptable deviations from the Camp David accords; and they have suggested that the plan be revised to conform entirely with Camp David. Here, too, I understand the legal motivation, which is to avoid undermining the validity of Camp David, or seeing U.S. commitment to Camp David flag; but can these people realistically believe that the clock can be turned back to 1978 and that negotiations can start from a basis which Jordan, Syria and others rejected categorically? This is an illusion which cannot and will not be fulfilled.

So, as the Secretary said in Cario, "the recognition that dreams and reality need to be reconciled is a first principle for peace in the Middle East." All peoples share collective, national dreams; these are the stuff of nation-building and political acculturation. But all peoples must appreciate the effect which local, regional and international realities have on their ability to fulfill overblown, inflated dreams. In the Middle East, both Arabs and Israelis must shed the kinds of illusions which serve as convenient excuses for denying reality. Both sides must seize what is possible by engaging in a process of peace and accommodation.

When these sentiments are expressed, however, the reaction heard most often is one of disbelief: the United States is naive in believing that this is a resolvable conflict. Emotions run too high, and hatreds too deep for Arabs and Israelis to seek common bases on which to engage in a peace process.

This reaction is wrong, and it is its own form of illusion, one which borders on hubris. Arabs and Israelis own no monopoly on confict, violence and hatred. Just recall the European wars of religon and nationalism. The peoples of the Middle East are not the first or last protagonists who find it politically expedient to stick to unrealistic assumptions, rather than contemplate compromise or concession. It behooves us, friends of Arabs and Israelis, to tell both that there is no longer an excuse for extremist positions and demands.

So, if the emerging realities of demography, tools of war and extremism point up the need for a new approach; and if the illusions which the parties have hid behind for so long are revealed as weak excuses for realistic policy; then the answer lies in a serious process of negotiations leading to a comprehensive settlement. Such negotiations will require compromise, but they can achieve the minimum required by both sides—an outcome that will prove conclusively that both can win at peace what neither can win through war.

In the limited time available, I will not review the American plan for negotiations—even though such a review would demonstrate that our plan meets the criteria of realism, sensibility and achievability which are required. I can review the plan later, if you wish.

Rather, I will start from an assumption that our plan is workable and realistic. What it is not, however, is a full script for negotiations. It provides a certain amount of structure for necessary discussions among the parties designed to flush out operational details. But it requires leadership and partners so that the parties can use the plan as a springboard to negotiations.

Since January, the United States has been engaged intensively in the effort to draw the parties out, to evince their willingness to address the operational details of our proposal. We shall continue these efforts for as long a time as it takes. Our determination will not flag.

But at the same time, there are steps which the parties themselves can take to condition the environment, create an atmosphere conducive to negotiations and send signals to the other side that positions are negotiable. One key step would be the acknowledgement by all parties of the land for peace formula represented by Resolution 242. Traditionally, this has been seen as an issue only for those in Israel who favor retention of the West Bank and Gaza. But this is not the case, for Palestinians and other Arabs will also have to respond to the same land for peace issue.

As we measure illusion against the test of realism, we need to answer some key questions:

Would the Arabs be prepared to accommodate themselves to a negotiation premised on the non-return of territory? The answer is no.

Is land essential to satisfy demands for justice? The answer is yes.

Would Israelis be expected to accommodate themselves to something less than full peace? The answer is no.

Are peace and normalization essential to satisfy the necessity for security? The answer is yes, because geography and conventional military strategy can no longer ensure security.

Do Israelis and Arabs require a period of transition before they can be expected to complete agreement on land for peace? The answer is yes.

So, I suggest that we move on two tracks simultaneously—one which focuses on substance and modalities of a negotiating process, and another, complementary which builds bridges of accommodation and realism between parties about to negotiate with each other.

For Israel, the challenge is to accept and act upon the understanding that legitimate political rights and democratic self-expression for Palestinians are compatible with Israeli security. In the long run, they are the key to real security for an Israel at peace with its neighbors.

Surely, this will not be easy, for the recent violence in the West Bank and Gaza has heightened Israeli security concerns and focussed on short-term solutions. But Palestinian willingness to engage in a political process needs to be tested. And practical steps toward this end can be undertaken in the period ahead with an eye toward creating conditions more beneficial to negotiations.

For Palestinians, equally, the challenge is to turn away from the dead-end path of violence and rejectionism, and to forge an effective, forward-looking political program. Israel's existence and security are non-negotiable. But the shape and content of a future settlement are exactly what negotiations are about.

For other Arabs, the challenge is to step forward in support of negotiations. To await ideal negotiating conditions is to ensure that negotiations will not take place. Arabs can instill confidence in Palestinians and Israelis that negotiations can work. In this respect, it is noteworthy that the Algiers Arab Summit meeting did not reject the U.S. peace process initiative. Participants have been quick to signal us that the US dialogue with the parties—Israelis and Arabs—should continue on our proposals and it will.

Both Arabs and Israelis have met many challenges in the past. None were more im-

portant, however, than those which confront them now. Indeed, the future of the Middle East will be determined by their ability to work together to confront their common challenge of erecting a structure of relations within which they and their children can live in peace and security.

EGGHEAD SCRIBBLERS!

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. SOLOMON. Mr. Speaker, as our distinguished colleagues in the Senate move closer to passing legislation (S. 533), elevating the VA to a cabinet level department—the bill has 74 cosponsors in the Senate—it is time to reflect on the negative press reaction to this popular initiative. In this regard I am placing in the RECORD a recent editorial by Richard Harwood entitled the VA Question.

THE VA QUESTION

(By Richard Harwood)

On the 12th day of November, 1987, 69 years after the armistice ending World War I, The Post, in a manner of speaking, started a modest little war of its own. The guns of its editorial page were unlimbered and fired off at targets all over town: the president, the Veterans Administration, Congress and the various veterans' lobbies. The purpose of this assault, carried out at dawn when most people were still sloshing their oatmeal, was to blow holes in a scheme to grant the Veterans Administration Cabinet status. It is now a mere "independent" agency, owned and operated (somewhat like the Agriculture or Defense departments) by 80 million constituents (veterans and their dependents) and such patrons as the American Legion and G. W. "Sonny" Montgomery (D-Miss.), chairman of the House Veterans Affairs Committee.

Six days passed with no counterfire from the politicians. Then, on Nov. 18, the House responded with a barrage that shattered teacups all over the editorial department. It approved the Cabinet proposal by a vote of 399 to 17. Pow! Take that, you egghead scribblers!

The six-day war was over. Before the summer is out, the Senate will have passed the bill, the president will have signed it, and the next chief of the agency will be addressed as "Mr. (or Ms.) Secretary."

It is not clear whether the Post editorialists, perhaps suffering from a white-collar form of Post Trauma Stress Disorder, recognized what had happened on Nov. 18, because they launched on Nov. 25 a soporific harassing operation against the bill. It began with an editorial bearing a half-hearted headline hinting at broken spirits and a lack of enthusiasm for the fight: "Such a Bad Idea."

Four months later, the editorial campaign was terminated ("quietly," as we say) but not The Post's involvement in the issue. The news department, initially on the sidelines, had by that time joined the fray. It produced a series of low-key articles devoted largely to allegations made by critics of both the legislation and the VA and to occasional predictions that the bill was in trouble.

One of the more amusing stories related "fears" in the Senate that Cabinet status would "politicize" this agency, which historically has been approximately as nonpolitical as the Democratic and Republican national committees. It will spend, under the direct and constant supervision of the big veterans' lobbies, $27 billion this year. As a token of its liberality, it handed out $156 million in overpayments a couple of years ago, a fact reported with some pride to its approving partners in Congress.

A counterattack on the news department was launched on April 10 by the Disabled American Veterans, a strong proponent of Cabinet status for the VA. The Blind Veterans of America, led by John Fales, contributed supporting fires. One charge was that the news and editorial departments were engaged in a conscious and unethical alliance to torpedo the legislation. Given the rivalries and frequent intellectual conflicts between the two departments, such an alliance would represent the second great act of détente in 1988. As Meg Greenfield, the editorial page editor, remarked to Mikhail Gorbachev during an interview last month, "Our empire [the Post company] is competitive within itself . . . like all empires."

The only direct evidence of teamwork on the VA issue is vaporous, consisting of the appropriation in one news story of language obviously borrowed and paraphrased from an editorial: "There is no dispute that the government has a lasting obligation to veterans wounded in combat and to their families and survivors." Reporters don't usually talk or write that way.

Still, there was a clear coincidence of viewpoint in the paper's editorial stance and its news coverage. It is explained by the principal reporter involved, Bill McAllister, as a simple case of the VA's critics making the most noise. That is one of those all-purpose, self-protective statements journalists use when accused of bias. Taken at face value, it converts mindlessness into a virtue. Was the news coverage tilted against the VA plan? Yes.

Now that the war is over, there is another question I ask with great trepidation: Who's running this town anyway, the press or the politicians?

A TRIBUTE TO DR. RICHARD SHAPIRO

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise in order to pay tribute to Dr. Richard Shapiro, a very special resident of my 17th Congressional District. I had the distinct honor and great privilege of observing surgical procedures with Dr. Shapiro when I visited St. Joseph Riverside Hospital in Warren, OH, on June 17, 1988. It gives me enormous pride to inform my fellow Members of the U.S. House of Representatives about this master ophthalmologist.

Dr. Shapiro has had a burning desire to be a doctor all of his life. He began his quest with a bachelor's degree from Miami University, Oxford, OH, in 1959, and then proudly received his medical degree from Jefferson Medical College in Philadelphia in 1964. After serving internships at both Jefferson Medical College Hospital and Montefiore Hospital in Pittsburgh, he received a Heed fellowship at Ohio State University to research retinal detachments and diseases of the retina. He now practices in Warren, OH, is on the staff of St. Joseph Riverside Hospital and Trumbull Memorial Hospital, and formerly served as chief of ophthalmology at both hospitals.

Dr. Shapiro lives in Girard, OH, with his lovely wife Anita Tamarkin, and his three doting children—Andrea, Sam, and Tom. He is a past president of the Warren Lions Club, is a former district trustee for the Ohio Lions Eye Research Foundation, and is a member of both the Cleveland Eye Bank's Medical Policy Committee and St. Joseph Riverside Hospital's Board of Directors. He is president of Rodef Sholom Temple, chairman of the Combined Jewish Appeal, and serves on the Youngstown Area Jewish Federation Executive Board.

Dr. Shapiro is a man of firsts when it comes to surgical achievements in Warren. He performed the first intraocular lens implant, the first phacoemulsification, the first silicone foldable intraocular lens, the first corneal transplant, the first radial keratotomy, and the first televised surgery. He also accomplished the amazing feat of the first combined cataract, intraocular lens implant, and corneal transplant surgery.

Dr. Shapiro is truly a wizard when it comes to medical surgery, and through his miracles he has improved the eyesight of countless people in Mahoning and Trumbull Counties. I am proud to call Dr. Shapiro my friend, and hope that his successful services to humanity continue for a long time. Thus, it is with thanks and special pleasure that I join with people of the 17th Congressional District in saluting the astounding work and extremely admirable character of Dr. Richard Shapiro.

ENERGY AND ANWR

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. YOUNG of Alaska. Mr. Speaker, many of our colleagues are aware of our energy dependence upon other nations, and the fact that the picture is not looking any brighter for the foreseeable future. Nevertheless, legislation before the Congress to open to environmentally sound oil and gas leasing the coastal plain of the Arctic National Wildlife Refuge in my district—the State of Alaska—is the bright spot in terms of responding to this growing international threat. Today I submit for the RECORD an article from the Memphis, TN Commercial Appeal, which underscores the need for prompt action by the Congress on this subject. Because of the vast support nationwide for this legislation, I will do this daily.

The article follows:

[From the Commercial Appeal (Memphis, TN), Mar. 25, 1987]

THE COMING OIL CRISIS

With domestic oil production falling and imports rising, this country is looking at a future threat to its national security and economic well-being. How it faces the problem will be a test of the American people's political maturity.

Just over a year ago, the United States imported only 27 percent of its oil needs. Then the collapse of oil prices shut thousands of wells, and imports have climbed to 38 percent. Sometime between 1990 and 1995 the nation will be dependent on foreigners for 50 percent of its oil.

It's worth recalling that such dependency was only 33 percent when the 1973-74 Arab oil embargo hit. That supply interruption started a chain reaction: gasoline lines, soaring oil prices, inflation, high interest rates, recession, severe economic loss.

Does anyone want to go through that again with the country more at the mercy of the oil sheikdoms than in 1973?

Last fall President Reagan ordered the Energy Department to study the oil future. Its report, published last week, projected that by 1996 the Persian Gulf will provide 65 percent of the Free World's oil consumption.

The threat is clear. The OPEC oil cartel will regain—and use—the whip hand. That possibility is real and urgent enough to call for decisive government action. To ignore it would not be just foolish. It would be grossly irresponsible.

Fortunately, the report discredits the oil industry's favorite solution—a $10-a-barrel tax on imported oil, which would pull up the domestic price by the same amount and stimulate exploration and production here.

The tradeoff would be unacceptable. The study says the tax would save 120,000 petroleum industry jobs over 10 years, while killing 400,000 jobs in other sectors. Its cost to the economy in a decade would be $200 billion. No thanks.

Energy Secretary John Herrington instead suggests restoring the 27.5 percent depletion allowance, a generous tax break the industry enjoyed until 1975. While that also would bring some new production, it might not be acceptable to Congress.

We know this is heresy, but it would be best to bribe oilmen to find more oil. Yes, we mean evil, greedy types like J.R. and Blake. If you want an outlaw caught, you offer a reward. If you want a predator killed, you post a bounty. If you want oil, you give wildcatters a bonus for each barrel they discover, which is straightforward, efficient—and politically impossible.

What can be done? First, fill the Strategic Petroleum Reserve faster than planned, to protect against the next oil cut-off. Second, deregulate natural gas and let it replace oil in utility and industrial boilers. Third, develop the reserves off the California coast and in northern Alaska. Fourth, take less than 20 years to build a nuclear power plant. Fifth, conserve; we again are driving our big cars fast. Sixth, overcome congressional demagoguery and find a way to favor domestic production.

Or, alternatively, we can do nothing and go on living in our temporary fool's paradise of cheap, abundant gasoline.

In that case, see you, Senator, in the gas lines.

A DISSERVICE TO AMERICA'S VETERANS

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. SOLOMON. Mr. Speaker, today I wish to place into the RECORD an excellent response by VA Administrator Tom Turnage to a RECORD statement made by Senator JOHN KERRY regarding agent orange.

The article by Paul Eagan entitled "Does Congress Hide Behind Science on AO Issue?," expressed dissatisfaction with the fact that "Vietnam veterans are still not receiving any compensation from the Federal Government for diseases caused by agent orange." I have summarized below the response made by VA Administrator Tom Turnage.

Regarding the Veterans' Administration "Proportionate Mortality Study of Army and Marine Corps Veterans of the Vietnam War," the article correctly reports that there was a statistically significant increased proportionate mortality ratio for non-Hodgkins' lymphoma and lung cancer among marines serving in I Corps. However, the article then states that the "VA immediately characterized the study's findings as a statistical fluke—as having little merit in ascertaining a scientific relationship between exposure to dioxin and specific diseases." This statement bears little resemblance to the actual position of the Veterans' Administration.

The VA has not dismissed this study as is suggested by the article. Rather, the VA has stated that the study is of concern to them and identified issues requiring further study and analysis. A proportionate mortality analysis was undertaken using a mortality study. The study cannot however, by its very nature, determine whether the observed results constitute a direct cause and effect relationship. The VA's proportionate mortality study cannot tell us what circumstances or event may have been responsible for the observed results.

Rather than simply pronounce the issue unanswerable, the VA has committed itself to going forward. The VA is updating the mortality study to include an additional 11,000 deaths of Vietnam era veterans, adding strength to the study's findings. Also, a separate analysis is planned for Army Vietnam veterans who served in I Corps, the area of Vietnam where Marine Corps veterans predominantly served. A separate mortality study is planned exclusively for Marine Vietnam veterans. It is hoped that this effort will produce overall mortality rates and cause—specific mortality rates for Marine Vietnam veterans.

Finally, the VA is reviewing the patient treatment file, a computerized data base containing summary information about veterans who have received hospital care from the VA. Attention will be focused on non-Hodgkins lymphoma and Hodgkins disease. The cases and controls will be compared with respect to service in Vietnam and other military service factors.

The article also states that "virtually hundreds of thousands of veterans have been treated, but the VA has never attempted to evaluate the resulting data. Why the VA has never undertaken such an analysis is an open question." This assertion is wrong. The VA has, in fact, examined the data in the patient treatment file. A case comparison study by Kang et al., was published in the Journal of Occupational Medicine (vol. 28, pp. 1215–1218 (1986)) The study looked at the VA's patient treatment file to identify all Vietnam era veterans whose conditions were diagnosed as soft-tissue sarcomas from 1969 to 1983. There were 234 cases identified. A comparison group consisted of 13,496 patients systematically sampled from the same Vietnam era patient population from which the cases were drawn. Military service information was obtained and analyzed. The authors found no significant association of soft-tissue sarcomas and military service in Vietnam.

The VA is also accused of having a "foot-dragging attitude in awarding compensation for disabilities associated with agent orange." The inference of that accusation is that there are disabilities which the scientific community agrees are associated with exposure to agent orange. The position taken by the Veterans' Administration is similar to that of the American Medical Association expressed in 1985 when it concluded:

> The studies to date on the human health effects of Vietnam exposures to Agent Orange do not reveal a clear relationship between serious illness and exposure. A number of important studies are still in progress; until they or others that may be deemed necessary are completed, no final conclusions can be drawn. * * * A wide range of adverse reactions in animals has been observed, which are species-dependent. * * * Except for chloracne, however TCDD has not demonstrated comparable levels of biologic activity in man; that is to say, no long-term effects on the cardiovascular and central nervous systems; the liver, the kidney, the thymus and immunologic (sic.) defense, and the reproductive function—in the male, female, or offspring—have been demonstrated.

Finally, the article incorrectly states, "True to its longstanding reputation for failing to meet its responsibilities on the agent orange issue, however, the VA manipulated the committee's scope of dioxin literature review in order to prevent awarding compensation." The VA has never limited the scope of the committee's review and has repeatedly stated its willingness to bring studies to the committee's attention from a variety of sources including Members of Congress interested citizens, State agent orange programs, and veterans and their organizations. The VA has attempted to focus the committee's attention on human studies and on the studies most often cited as demonstrating a casual association.

Mr. Speaker, in conclusion I must say that I believe that the Veterans' Administration has responded to the difficult and complex question of the effects of exposure to agent orange in a responsible and responsive way. Those who would play politics with agent orange do a great disservice to America's veterans.

A TRIBUTE TO FRED LUSCHER

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise in order to pay tribute to Mr. Fred Luscher, a very special resident in my 17th Congressional District. Mr. Luscher recently received the great honors of being named both "Sports-

man of the Year" by the Trumbull County Federation of Sportsman and getting the "Service Appreciation Award" from the Lakeview Coon and Fox Hunters. And I believe that my fellow Members of Congress should be aware that this master hunter is still going strong at age 83.

His never-ending passion for hunting began 68 years ago when he went on his first rabbit hunt. Fred and his wife Dorothy have had countless rabbit meals over the years in their Cortland, OH home. But in time, fox hunting became his favorite sport. Aided by what was reported to be the best fox-sniffing beagle in the United States, Mr. Luscher tirelessly hunted fox, especially after the fox became a valuable fur.

Mr. Luscher helped found the Lakeview Coon and Fox Club 30 years ago. He is still an extremely active member, and has slavishly and exhaustively devoted himself to promoting the club. Fred is responsible for selling licenses for fishing, hunting, and trapping to people around the Mosquito Lake and Farmington, OH areas. He was also an outstanding worker for the Republic Steel Corp. for over 40 years, and is well known as an avid collector of duck stamps. Mr. Luscher firmly believes that the secret to fox hunting is to "start your dog, let them run awhile, then move in, find a spot and stay there."

Mr. Luscher is richly deserving of the awards he has received, for I can think of no one who has served Trumbull County sportsmen better for these past 30 years. Fred is well-respected and loved by hunters in Ohio and Pennsylvania, for he has helped countless numbers of them throughout the years.

I am very proud to call Fred Luscher my friend, and wish him many more years of successful hunting. Thus, it is with thanks and special pleasure that I join with the people of the 17th Congressional District to salute the very noble character and devotion to sport of Mr. Fred Luscher.

PUBLIC HEARING BY THE NEW YORK STATE DIABETES COUNCIL

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LAFALCE. Mr. Speaker, on June 20, 1988, I had the opportunity to present opening remarks at the first in a series of hearings throughout New York State conducted by the New York State Diabetes Council. I would like to share those remarks with my colleagues:

As I understand it, the Council, chaired by Dr. Lester B. Salans, is comprised of scientists, physicians, allied health professionals, diabetics and people concerned about diabetes from across the State; and has been asked by New York State Health Commissioner, Dr. David Axelrod, to undertake a study of diabetes mellitus in the State. The study, supported by funds from the State, the Juvenile Diabetes Foundation and American Diabetes Association, will be a comprehensive examination and evaluation of the status of diabetes research and health care delivery in New York State.

The Chairman of the Council, Dr. Salans, is no stranger either to me or to the Western New York community. As the former director of the National Institutes of Health's Arthritis, Diabetes and Digestive and Kidney Diseases Institute, Dr. Salans traveled with me to Buffalo to address supporters of our diabetes associations. He has provided guidance and information to many in our area, and I welcome him back to Western New York today.

It is my understanding that the Council is seeking opinions from citizens, doctors, people with diabetes, parents and educators about research needs, care and service costs, patient and professional education, medical payment problems and the psychosocial aspects of diabetes; and hopes to identify problems and gaps in the current health care system and recommend effective solutions to the Commissioner of Health.

This is a serious goal for one of this nation's most serious medical and public health problems.

Diabetes mellitus affects an estimated 12 million Americans and the prevalence of this disorder is increasing at an alarming rate. Individuals of both sexes, all ages and all socio-economic groups are affected by this disease. Blacks, Hispanics, Native and Asian Americans have higher rates of the most common form of diabetes mellitus, Non-Insulin Dependent or Type II Diabetes, than do whites, and diabetes impacts especially hard upon the elderly. The vast majority of diabetics reside in metropolitan areas and a substantial proportion of the total diabetes population is in the Northeastern part of the country. Thus, diabetes is a very common disease affecting large numbers of people, especially in the populous state of New York. It has been estimated that diabetes affects approximately 832,000 of New York's citizens. In Buffalo an estimated 75,000 are afflicted and in Rochester approximately 51,000 persons suffer from diabetes mellitus.

Moreover, diabetes is a serious, life threatening disease. It is the third leading cause of death by disease in the United States, the leading cause of new blindness in adults, a major cause of end-stage kidney disease requiring dialysis, and a major cause of heart attacks, strokes and hypertension. The economic costs of diabetes to the U.S. and New York economies are enormous, representing at a minimum an estimated $13.5 billion annually or about 3.6 percent of the total health costs in the United States.

Thus, diabetes is a major medical and public health problem for the nation and is particularly serious for New York with its large population and heavy representation of ethnic and racial groups at high risk. Fortunately, during the past several years, a number of important advances have been made in virtually every field of diabetes research and patient care. These advances hold great promise for improving the outlook for individuals afflicted with diabetes. Among these are:

A new understanding of the causes and mechanisms of diabetes, such as the association of specific genetic factors with both Insulin Dependent Diabetes Mellitus and Non-Insulin Dependent Diabetes and the demonstration that Insulin Dependent Diabetes Mellitus is an autoimmune disease. Identification of early indicators of the autoimmune disorder lays the foundation for possible preventive therapy;

The identification of the biochemical events by which insulin produces its effects on glucose (sugar) metabolism by the cells of the body:

The production of human insulin by recombinant DNA technology;

An increased understanding of the roles of diet and exercise in the treatment of diabetes;

Improved methods for measuring and regulating blood sugar in patients with diabetes;

Laser photocoagulation therapy to treat diabetic retinopathy and reduce the risk of blindness;

The development of strategies for pregnant women with diabetes that improve metabolic control and thereby prevent birth defects and early infant mortality;

Effective medications to control high blood pressure, and preventive strategies to reduce lower extremity amputations; and

Development of standards for diabetes patient education programs to improve the quality of this component of care and to facilitate third-party reimbursement of outpatient education.

Despite these and other exciting advances, the personal and public health problem of diabetes in New York, already of vast proportions, continues to grow.

I applaud Dr. Axelrod for appointing a distinguished group of individuals to hold this series of public meetings and to receive information and advice from experts throughout the U.S. with special knowledge and experience in diabetes research, health care, education and public health related issues. I applaud those who are taking the time to share important information with the Council chairman and members. We all look forward to receiving a report of the Council's findings and recommendations to the Commission of Health so that progress continues in the effort to combat and eventually prevent this dread disease.

Thank you for affording me the opportunity to participate in this important event.

IT MUST BE AN ELECTION YEAR!

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. HEFLEY. Mr. Speaker, it must be an election year! Like the swallows returning to Capistrano, election years are marked by lavish, irresponsible, budget busting efforts to buy votes for incumbent Members of Congress.

An example of this is the recent effort in Congress to address the very real problems of catastrophic and long-term health care costs of the elderly.

When President Reagan asked in his State of the Union address in January 1987 that these issues be looked at, most Members agreed. These are deinitely problems that should be solved. Retired persons should not have to impoverish themselves because of an illness before they can get help. But the plan Congress sent to the White House for the President's signature was more than he bargained for.

The president had presented a plan calling for a $2,000 annual cap on out-of-pocket expenses for Medicare covered services. The plan would have been financed by increasing the premium for the optional part B Medicare coverage by $4.92 per month.

Congress took over and set separate caps for part A—hospital—and part B—physician—costs, extended several other benefits, and added a new prescription drug benefit. To pay for this, the bill will increase the premium for part B coverage by $10.20 per month by the time the full benefit package is in place in 1993. But in addition, the bill will assess a mandatory "supplemental premium" through the income tax system. For every $150 of income tax owed, persons eligible for Medicare will have to pay an additional $42. That is an increase in income taxes of almost 30 percent. Both increases are indexed, and will rise as program costs rise.

Beneficiaries can avoid the flat premium increase by dropping part B coverge, but the supplemental premium is mandatory. By effectively requiring all elderly to enroll in the full Medicare Program, Congress has eliminated the option of turning to an insurance market that met the needs of approximately two-thirds of the elderly before this bill. In the words of one Congressman, "we are going to socialize, essentially federalize, the delivery of all acute care."

The bill passed, making health care mandatory, raising taxes, and dumping the costs on the backs of retirees, most of whom were taking care of this need already through their private insurance market. All retirees will pay to participate in a program in which a very small percentage will actually benefit.

To make matters worse, the bill did not really address what most elderly regard as the true threat of aging: the cost of long-term care for chronic health problems. By excluding long-term care from the bill, Congress recognized that long-term care presented much more difficult problems.

On June 8, the House faced its second vote on an expansion of the Medicare Program. That vote, on H.R. 3436, the so-called Pepper bill, had been presented as a vote for or against protecting the elderly from the crippling costs of long-term care. It was no such thing.

This bill did not present a realistic way of meeting the long-term health care needs of the elderly. It would have been difficult to implement, and attempting to do so would have meant disastrous results for health care providers, the Federal budget, and the elderly.

Though the bill was presented as a cure-all for long-term care, it would have not provided 1 cent for nursing home care, the major out-of-pocket expense of the elderly. The bill concentrated exclusively on home health care, which is very important but not all important. The bill promised everything but would have delivered very little.

It promised home care to all elderly, but relied on the efficient operation and expertise of agencies that do not exist in the number necessary to deliver that care. Creating the agencies and manning them on short notice would surely have resulted in waste, fraud, and abuse for years to come.

Additionally, no adequate methods of determining eligibility had been developed. As eligibility and benefits varied, the resulting conflicts would have resulted in thousands of appeals and lawsuits against the Government.

The program would have added $5 billion to the deficit each year, requiring either a 37-percent cut in payments to providers, or a 56-percent tax increase to cover the program. One option requires massive Federal intervention in the private marketplace, the other penalizes an already overburdened taxpayer who would already be expected to come up with an additional $30 billion in payroll tax increases.

The problems with this bill could have been addressed and perhaps solutions found had the bill been subject to the regular legislative process. But in an effort to gain from extravagant, and ultimately cruel promises to the elderly, the bill came directly to the floor of the House without ever being considered by any committee of jurisdiction.

Fortunately for everyone, the Pepper bill failed. But the problems didn't go away. We still need answers for the elderly's long-term health care needs—both home care and nursing home care. maybe after we get past the election year pandering we can move on to responsible solutions.

NATIONAL FEDERATION OF FEDERAL EMPLOYEES' RECOGNITION DAY HELD AT LIBERTY ISLAND

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. GUARINI. Mr. Speaker, a most meaningful event sponsored by a group of employees working at the U.S. Department of Housing and Urban Development [HUD], Newark, NJ, was held Sunday, June 12, 1988, in Jersey City, and at the base of the Statue of Liberty.

The group I speak of is the National Federation of Federal Employees, local 1616, which has in its membership a group of dedicated men and women who are working to provide the best housing opportunities possible for individuals at all levels.

On Sunday I was invited to make a presentation to Michael S. Gemza, outgoing president of local 1616 for distinguished service as a labor leader at the Newark office of HUD during the periods from 1975 to 1983 and 1985 to 1988.

Nearly 200 Federal employees, their families and friends, gathered at Liberty State Park in Jersey City to board the ferry to Liberty Island where the tribute was paid.

Among those present was James Peirce, national president of the 150,000-member National Federation of Federal Employees and his wife, Ellen; Abraham Orlofsky, national secretary-treasurer and his wife, Thelma; and Red Evans, national publicity director accompanied by his wife, Marie, who journeyed from Washington to officiate at the ceremony, which will be reported in the Federal Employee.

An old friend of mine, Pablo Rivera-Alvarez of the HUD Newark office was master of ceremonies and after leading in the Pledge of Allegiance, he read a congratulatory letter from U.S. Senator FRANK LAUTENBERG.

As I could not attend this function I asked a member of my staff, Conrad J. Vuocolo, who spent 22½ years in public housing serving for a time as executive director of the Jersey City Housing Authority, to represent me. He expressed my deep appreciation for the efforts of HUD employees, helping to provide every type housing for the homeless, for the low-income persons, the elderly and handicapped, affordable housing in private dwellings, one- and two-family homes and the multidwelling units in my district.

According to information on file in my office, upward of 75,000 individuals residing in the 14th District which I represent live in some sort of HUD supervised program. The National Federation of Federal Employees indeed echoes the words of our late President John F. Kennedy, who during September 1962 said:

> The activities you have sponsored since your founding in 1917, the advice and counsel you have rendered from your collective experience and wisdom—these have played an important role in building the present state of competence in the Federal service. I know I can count on your continued efforts to make the Federal service an even better instrument of our national goals: One that will offer the best in terms of challenges and rewards.

Their major achievements over the years is indeed a history of progress and success, starting in 1920 with successful support of the retirement law to the current fight to the protection of employees' rights in grade promotions, strengthening of the merit system, equal rights for women and minorities and safety in the workplace.

According to Richard Pace, a native of Jersey City, who is the current president of local 1616, the NFFE is indeed proud of the past and ready for the future. He reports:

> For over 68 years NFFE, the first and largest independent Federal employees union, has worked closely with Presidents, Members of Congress, and agency heads, to protect and advance the rights of Government workers.
>
> Before Federal workers had a union, they had little say about working conditions and employee rights. In 1917 Federal workers joined hands and formed the National Federation of Federal Employees. Through NFFE, Federal workers are united in a single voice to effectively make changes for the better in the civil service system.
>
> NFFE became the first independent union for Federal employees in 1931 when it withdrew from the AFL-CIO. Other Government employee labor organizations represent non-Federal workers as well as civil service workers. NFFE works exclusively for Federal employees.
>
> No other union can match NFFE's experience, independence, and exclusive representation of Federal workers.

I look forward to working closely with Mr. Pace, who holds a graduate degree in management from New York University. He coordinated the days' events. He was assisted in this task by the members of the union and his wife, Barbara, and their two daughters, Jean and Barbara Ellen.

In my opinion, it is of deep social significance that the ceremonies were held at the base of the Statue of Liberty. This location reiterates the symbol of liberty and justice for all, with special emphasis on liberty—in that all individuals deserve a place to live with

rents commensurate with their income and ability to pay in a safe, sanitary facility.

I am sure fellow Members of the House of Representatives wish to join me in a salute to Michael S. Gemza, who received the first labor leader award from local 1616. His work in the area of improving working conditions through constructive dealings assuring everyone of the collective bargaining privileges has been exceptional. Indeed he has held high the 70-year tradition of union democracy within the National Federation of Federal Employees.

VIETNAM WOMEN'S MEMORIAL PROJECT

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. GEJDENSON. Mr. Speaker, as I introduce a bill for Vietnam Women's Memorial, I wish to bring to the Members' attention the testimony of Linda Spoonster Schwartz before the Subcommittee on Libraries and Memorials.

TESTIMONY SUBMITTED TO HOUSE SUBCOMMITTEE ON LIBRARIES AND MEMORIALS

(By Spoonster Schwartz RN, MSN-Major USAFNC, Retired)

My name is Linda Spoonster Schwartz. I am retired from the United States Air Force. I am a member of the Board of Directors of the American Nurses' Association and have served as a Regional Coordinator for the Vietnam Women's Memorial Project since 1985. I was elected to the Board of Directors of the Project on May 27 of this year. I would like to thank the Committee for giving me this opportunity to share my thoughts about this project.

The Vietnam Women's Memorial Project has come here today to ask you permission to give our country a gift—a statue to commemorate our service to the Nation. We have traveled the length and breadth of America with a prototype of the proposed statue. We have spoken in Grange Halls, churches, hospitals, county and State fairs and large convention halls. Everywhere we go, Americans not the sophisticated type that sit on Commissions, farmers, secretaries, housewives, postmen, children, veterans of WWI, WWII, Korea, Vietnam, Grenada, and Honduras—they all given us their encouragement, contributions, and confidence that this statue must take its' rightful place at the Vietnam Veterans Memorial.

This effort is not just the thoughts of a few but it is the hope of thousands. Over 2,000 citizens from every State in the union volunteer for the Project on a regular basis. We have identified over 3,000 women veterans of the Vietnam War. Men, women and children stood in the winter cold of Boston last January with tin cans, asking passing motorists to give us money for our cause. Those men didn't stop until they had collected over $12,000 to see this statue built. We have flooded these Halls of Congress with poster petitions signed by people who want to see the statue become a reality. I consider every contribution, every letter of support, every signature to be the people's vote of confidence for our Project. Our goal has been endorsed by the hands and hearts of Americans everywhere.

There are those in the past and no doubt again today will use philosophical and artistic reasons why you should not act favorably on H.R. 3628. It is troubling to me that a handful of opponents can obstruct the aspirations of so many others.

Perhaps it is less mystifying when you note that six months before our project sought any approval we were told we would not win. In a May 11, 1986 Memo to the Board of Directors of the Project our Corporate Council advised that "Information has been received by the Project that there is strong sentiment among certain members of panels which must approve placement of any statue on the Mall, that any statue added to the National Vietnam War Memorial be the work of the artist who created the statue of "Three Fighting Men" • • • Information received has indicated further that approval will not be given for the work of any other artist". The memo reads further, "Taken as given that the advisory panels will insist that only Mr. Hart create additional works of art that may be placed at the National Vietnam Veterans Memorial several legal issues are presented."

I would also like the Committee to note that a November 11, 1987 Post article reported that Mr. Fredrick Hart presently receives in excess of $85,000 annually from royalties on the sales of souvenirs and reproductions of the "Three Fighting Men". I would like you Congresswomen Oakar to think about the appropriateness of Mr. Hart sitting on the same Fine Arts Commission that rejected our statue. Review of the transcripts of that hearing indicate that Mr. Hart was present and participated in the discussion. We would not be here today if the Vietnam Women's Memorial Project had been given a fair hearing then. Furthermore, I do not believe we will ever be given fair treatment as long as Fredrick Hart will be sitting in judgment of a potential competitor to his royalty income.

To those who criticize our statue because it represents a nurse. I use Mr. Bob Dubek's explaination that the "Three Fighting Men" were chosen because the "grunts" bore the brunt of the war. By the same token nurses, especially Army Nurses, experienced the human tragedy of war on a daily basis. Young nurses with less than 6 months experience were sent to Vietnam, to active combat zones, they bore the brunt of the war—men with no arms or legs, men burned by napalm, young men gasping their last breath. The names of 8 women all nurses are engraved on the wall Congress didn't think twice about sending these women to Vietnam—you shouldn't hestitate in honoring them now.

Perhaps you are unaware that the names on the Wall represent only 2 percent of the actual numbers of casualties of the war. The 98 percent save rate, the best in any war was due to the professionalism and sacrifices of these nurses. Even today some of these brave women hide the fact they ever served our nation so valiently. Some still have the frightening memories, some feeling guilty they didn't do enough—for many the war still rages on.

It is difficult for me to understand why some people in Congress are so reluctant to specify the site for the statue. Hasn't Congress already set aside 2.2 acres to honor the men and women of the Vietnam War? Didn't the Vietnam Veterans Memorial Fund endorse the concept of adding a bronze statue of a nurse to the Memorial? Just as she stood with her brothers then, she belongs with them now. Near those rows and rows of names who's faces she will never forget. You see, Madam Chairman, we knew them. We worked with them, laughed with them, prayed with them and were with them when many of them passed from this life.

We ask your help in acknowledging one of the most heroic chapters in our nation's history the partiotism, sacrifices, and dedication of the women veterans of Vietnam. I believe those women will not have the "Homecoming" they truly deserve until our statue takes its rightful place at the Vietnam Veterans Memorial

STANLEY WHITMAN IS EXTRAORDINARY

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LEHMAN of Florida. Mr. Speaker, in business, Stan Whitman of Miami Shores in our 17th Congressional District defied common wisdom and ended up uncommonly successful. Square foot per square foot, his Bal Harbor Shop is the country's highest revenue-producing shopping center. It has an international reputation as one of the most prestigious in the world.

Stan Whitman, with his iconoclastic methods, is a role model for today's young entrepreneurs. I wanted to share with my colleagues the item reprinted below, which appeared in this month's Florida Trend magazine. It tells of a person who was unafraid to back his ideas and beliefs with his resources.

Stan, like me, is an avid tennis player, and for over 30 years we've competed. Mr. Speaker, I won't say who wins most often. I will only say that I'm glad Stan decided to put most of his energy into his Bal Harbor Shops, and not into his tennis game.

STANLEY WHITMAN, FOUNDER OF BAL HARBOUR SHOPS

On what made Bal Harbour Shops a success:

The most important thing about this center is definitely its merchant mix.

In the '50s and '60s when we got started, the biggest outfit in the country for feasibility studies was a guy named Larry Smith. His company came down here to look this over and come up with a feasibility study and how it should be merchandised. And they came in with supermarkets and hardware stores and drug stores and all of these things that everybody was putting in shopping centers at that time. Well, they flat didn't understand what I was talking about. The people who handled my account, other than Larry Smith, just didn't comprehend this thing. I couldn't get through their heads that I'm not going to put any variety stores in here. they don't fit.

Then I got Perry Meyers, who had come out of Allied Stores. And Perry understood it.

I can't tell you the shopping center developers who came by and would talk with me and they'd say, "Well, where's your supermarket?" I'd say, "Isn't one." They'd say, "Goddam fool, you're gonna go broke!" I'm not kidding you. It's just like charging for parking. We charge for parking. And they'd say, "You're out of your mind! Shopping centers don't charge for parking. You've been in the sun too long."

The big, big thing, and the big thing that will remain with us, is that we have a prestige, quality mix that nobody in the country can match.

And I attribute that to starting off with the number one salon operator in the world; she has been for probably the last 40 or 50 years. Nobody challenges Martha. I had lunch with her the other day. She's selling designer dresses for $30,000. She sold one customer in one shopping trip $240,000 worth of merchandise. The average dress shop, if it could do that much in a year, would be delighted. . . .

It took tremendous perseverance. I'll tell you what a horrible crapshoot it was. This was started without a single lease. You don't do that! You just don't do that. So I can't say this was smart to start. It was just dam lucky.

ETHIOPIA'S AUSCHWITZ

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. ROTH. Mr. Speaker, last Friday, the lead editorial of the Washington Times described the oppressive tyranny in Ethiopia that has enslaved 45 million people and threatens to kill by starvation 2 to 3 million people in the coming months.

While the world's attention is dispersed from hot-spot to hot-spot around the globe, a genocide is underway in Ethiopia paralleling the atrocities of Auschwitz. The Ethiopian people have suffered enough. Mengistu must go.

[From the Washington Times, June 17, 1988]

ETHIOPIA'S AUSCHWITZ

Ethiopia's Col. Mengistu Haile Mariam may not be one of this century's pioneers in the art and science of tyranny, but in the 14 years since seizing power he clearly has become one of its most ardent practitioners. While Stalin and Hitler relied on gulags and gas chambers to wipe out populations they hated, the colonel is content to use plain old mass starvation. This spring the Marxist despot cut off food supplies to his country's rebellious northern provinces and kicked out all foreign relief workers. The resulting deaths may number as many as 3 million, according to Frederick Machmer, head of the U.S. Agency for International Development.

With the help of East German secret police and 3,000–4,000 Cuban troops and advisers, Col. Mengistu has converted his country into Moscow's most reliable African satellite. Soon after his coup in 1974, he collectivized agriculture, crushed the Coptic Church and created a state-run media so enamored with Marxist jargon that the government had to issue a dictionary so the audience could understand the broadcasts. Nearly 3 million Ethiopians are believed to have fled from the regime's terror since 1974, and an untold number have paid with their lives the price of the colonel's government by nightmare.

The toll from the regime's active campaign of terror may be matched by the carnage from its ban on foreign food aid. Resistance movements in the provinces of Eritrea and Tigre have simmered for more than two decades, and the colonel's decision to starve them and their supporters along with anyone else hapless enough to live in the rebellious areas is intended as his own final solution for the insurgencies. His order to cut off food two months ago followed rebel victories that seemingly caused his governments to totter.

Until then, international relief efforts had made progress in caring for the victims of famine and war. More than 45 relief agencies had learned how to work together to transport, organize and distribute multinational donations of food totalling 1.2 million tons pledged in the last six months.

The strategy of the relief was to avoid the catastrophic famine of 1984–85, when an estimated 1 million people starved. The plan was to hand out food at regional centers so recipients could carry it home themselves and plant seeds for the next season. That worked well for a time, but with successful rebel offensives sending government troops reeling, Col. Mengistu decided to get tough. Despite denunciation of the colonel's genocidal order by Assistant Secretary of State Richard Williamson at the United Nations and by President Reagan, the colonel has remained indifferent.

The key to stopping the Ethiopian holocaust lies in Moscow, which could force him to rescind his policy. Secretary of State George Shultz broached the issue with Soviet Foreign Minister Eduard Shevardnadze in April, but received little more than non-committal shrugs in response. Nor was Ethiopia a large item on the Moscow summit's agenda.

The Soviets don't necessarily care what happens to the Ethiopians as long as Moscow can preserve its control over the strategically located nation that controls southern access to the Red Sea, yields entrance to sub-Saharan Africa and acts as a hinge around which two continents turn. In using forced famine to destroy political opposition, Col. Mengistu is following in the footsteps of communists from Stalin to Pol Pot, and glasnost apparently does not bar Mikhail Gorbachev from exploiting the genocide for his own geopolitical goals.

The United States has sent 250,000 metric tons of food to Ethiopia, and has taken the lead in protesting Col. Mengistu's brutality. The administration now must do all it can do to bring worldwide pressure to bear on Mr. Gorbachev, who alone seems capable of ending the genocidal atrocities of Africa's Hitler.

ADDRESS BY MR. SPENCER F. ECCLES

HON. WAYNE OWENS

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. OWENS of Utah. Mr. Speaker, I rise today to share the comments of one of my most distinguished constitutents, Mr. Spencer F. Eccles, chairman and chief executive officer of First Security Corp., headquartered in Salt Lake City, UT. Mr. Eccles, a near legend in western banking circles, learned about the world of economics at the knee of his celebrated uncle, Marriner S. Eccles. As many of you know, Marriner Eccles was a Special Assistant to the Secretary of the Treasury during the New Deal era of the 1930's. He authored both the Federal Housing Administration Act of 1934, and the Banking Act of 1935.

President Roosevelt appointed him Chairman of the Federal Reserve Board in 1934, and he held what is still one of the longest tenures as Chairman of the Fed. He was instrumental in keeping the Fed independent, having pulled the trigger that initiated the famous Fed-Treasury accord of 1951. He went to Washington for 1 year and stayed for 17.

Another First Security executive, E.G. Bennett, was one of the original three FDIC directors and it was under his leadership that the FDIC was successfully launched. One of First Securities long-time presidents and former CEO, George S. Eccles, played a key role in originating the Association of Bank Holding Companies and was president of both that association and the Association of Reserve City Bankers.

So that my colleagues might benefit from the younger Eccles comments and expertise, I insert his March 17, 1988, address to the Bank Capital Markets Association, 16th annual conference held in Tucson, AZ, into the CONGRESSIONAL RECORD:

ADDRESS BY MR. SPENCER F. ECCLES

If your team didn't play in this year's Super Bowl, you might have taken the time to switch channels on Super Bowl Sunday to watch the golf match instead. If you did, you might have heard Lee Trevino respond to one of those deeply insightful questions that sport commentators are known to ask these days.

Specifically, Trevino was asked what inscription he'd like to have on his gravestone, and his well used reply was—"I told you guys I was sick!"

Well, our industry has been telling the Congress the same thing for the most of the past decade.

Specifically, we've told Congress that our industry has been losing market share! Banks' share of all financial assets held by financial institutions fell during the ten-year period 1975 to 1985 from 38 percent to 31 percent.

We've told Congress that while domestic bank deposits grew 130 percent during that ten-year period, other segments of the financial service industry grew much faster.

For instance: S&L deposits increased 203 percent, pension funds increased 264 percent, and mutual funds increased 496 percent.

But money market mutual funds grew 5,508 percent, and total liabilities and capital of securites brokers and dealers grew by 1,466 percent.

And we've also told Congress that making a profit in the banking business is getting harder and harder. Last year our industry recorded its lowest return on assets since 1933—0.13 percent.

We've told Congress that specific markets like auto-finance have nearly disappeared for many banks. And perhaps that's why you see that one group of bankers (IBAA) and the credit unions (CUNA) have asked the Federal Trade Commission to investigatse the advertising practices of the big three auto-finance companies.

And finally, we've told Congress that the best way to strengthen the banking industry is to enact positive legislation—not moratoriums and artificial market barriers.

We've been telling Congress that we're sick, and you know, there's some evidence that finally, Congress is listening.

I must confess that when the senior senator from my state of Utah—Jake Garn—lost his position a year and a half ago as Chairman of the Senate Banking Committee, I thought that modernization of the banking laws was definitely on the back burner. But William Proxmire of Wisconsin surprised us all when he placed Glass-Steagall on the bargaining table.

It was a truly pleasant surprise—not unlike one that comedian Rodney Dangerfield once had. He said he went to a fight, and to his surprise, a hockey game broke out! In our case, some pretty good legislation broke out.

It's almost as though Washington has become the scene of a "financial services perestroika"—a reform effort driven by a new understanding that to thrive and serve customers more fully, banks must be allowed to compete and profit. If a perestroika has come to Washington, it is certainly welcomed, and long overdue!

I should, however, stress that this phenomenon was by no means an accident, nor a case where Congress acted alone. As you know only too well, a great many bank people, and their various state and national associations, have worked long and hard to initiate this perestroika. I'm in somewhat of a unique position in that I've seen the process from inside, and from several different viewpoints. I'm currently a member of the board of directors of the American Bankers Association. I'm Vice-Chairman of the Association of Bank Holding Companies, and I'm a member of the Government Relations Committee of the Association of Reserve City Bankers. And through George Denton of our bank, we have a role in the leadership of your association also.

I've watched the important process over the past year or so by which these four bank groups, along with the Consumer Bankers Association and the Independent Bankers Association of America, have forged a unified front on the key banking issues. I've participated in the "summit" meetings of the leaders of these six groups. I've witnessed the steps that, gradually, have brought us all closer together.

Now, do the groups I mentioned agree on all the issues? No, of course not. Do they agree on the important issues? Yes—particularly when the issues are as important as the Congressional moratorium that expired on March 1, and the need for reform and modernization of the banking laws. When things get really tough, bankers and their associations pull together.

They tell me at the ABA that at least 250,000 letters went to the Congress on the moratorium issue, probably the strongest example of grassroots lobbying our industry has ever seen—even more than the "withholding at source" confrontation a few years ago. Of course, the moratorium was just one part of this letter writing effort. The other part was to show support for Senators Proxmire and Garn—and their bill S. 1886, amending Glass-Steagall. As you know, the Senate Banking Committee reported out a bill that comes pretty close to what our industry has wanted, at least on the securities side.

I want to talk about Glass-Steagall in a few minutes, but first I'd like to put this discussion in perspective—the perspective of a regional bank.

I represent a healthy regional bank from a recovering economic area. Ours is not a money-center bank, but we fully appreciate the benefits that will accrue to us should the Glass-Steagall Act be rewritten and banks be permitted to engage in securities activities.

First Security is the oldest continuous multi-state holding company in the country—established in June of 1928.

Since that time, our institution has made it a point to innovate to whatever extent we could in the banking business where we thought we could make a profit. We were an original and major shareholder, through our bank holding company and certain individuals, in the primary government securities dealer, Aubrey G. Lanston and Company. With passage of the initial Bank Holding Company Act of 1956, in 1959, we had to spin off to a separate holding company, the ownership of Lanston as well as three insurance companies. This spin off holding company—First Security Investment Company—also owned two savings and loans, one insured in Idaho, one uninsured in Salt Lake City. We also acquired a leasing company, and F.I.F., a mutual fund management company based in Denver, and established an insurance company in Liechtenstein. We have sold some of those entities since, and in 1969, we came full circle by acquiring back from First Security Investment Company, those that qualified. Also, at one time, our bank was a member of the Salt Lake Stock Exchange, and for a while we were able to earn split commissions from orders entered by the bank through brokers on the exchange. We also had a state nonmember bank that did property management, real estate brokerage and realtor business, and full line general insurance agency business. We started First Security Data Corp to do computer output microfilm work with offices in Salt Lake City, Boise, and Denver.

We are a member of the Independent Bankers Association (IBAA) and having been in the insurance agency business since 1931, are a member of Indpendent Insurance Agents of America (IIAA). First Security Corporation is one of the 15 bank holding companies in the United States who is exempt from the insurance restrictions under the Garn-St Germain Act because of Exemption G, Title 6, and we are the only bank holding company who has secured Fed approval to do general insurance agency business in all 50 States.

Along with 21 other bank holding companies and a non-bank entity, First Security is a shareholder user of BHC Securities, Inc., a broker-dealer located in Philadelphia and acknowledged to be one of the best discount broker entities in the country. We have also maintained our investment management activities in a separate subsidiary of the Corporation, which subsidiary has enjoyed very good performance during the recent period.

The Proxmire-Garn bill (and others) provide for supervision by the S.E.C. We are accustomed to supervision from numerous regulations and would see no problem in working with the S.E.C. for our securities operations.

I mention these things because I'd like you to know that our bank always has viewed new competitive opportunities as a chance we shouldn't pass up. We're looking forward with great anticipatation to the day when Glass-Steagall will be behind us. We'll view that day as an opportunity not to be missed.

Not because we view the repeal of Glass-Steagall as the panacea to cure all of our industry's ills, but because we view the repeal of Glass-Steagall as the chance to compete more effectively and flexibly in various areas, and to offer more complete and diversified service to our customer base and make a profit.

In other words, our vision of the future is not to turn to regional bank holding company like First Security into an investment banking house replete with every product known to modern capital markets: Our vision is one in which we can bring products to the marketplace that make sense to our customers, who otherwise might be precluded from availing themselves of these alternatives.

But the real opportunity—the one that you and I should be talking about with the decision-markers in our home towns and in Washington—is the opportunity for consumers once Glass-Steagall is changed. By "consumer", I mean the corporation, the municipality and the individual consumer—each important segments of the bank's customer base. Let me spend just a minute or so on each of these groups.

First the corporation.—It's clear that minus Glass-Steagall, the securites subsidiaries of our bank holding companies could really enhance their investment-banking services to middle-market and smaller corporate customers. That additional service might come in the form of underwriting public offerings of common stocks. More likely, it will come through the structuring and sale of long-term and short-term debt or preferred stock of a corporate customer—an intermediary function that will permit us to retain and develop new relationships with both the corporate seller and the institutional or individual buyer. Not only would this opportunity give us the ability to offer new financing vehicles to our customers. We believe it also provides our lending personnel with a new flexibility of various alternatives to offer the corporate customer, the most economical forms of fiancing possible at a reasonable profit to the bank.

Furthermore, these expanded powers would permit all banks to have less concentration in specific types of loans, especially by giving us the opportunity to directly originate and distribute securities to various types of investors. A regional bank such as ours certainly senses the opportunity that is there, since many broker-dealers have merged or simply deserted the local market altogether.

As for the commercial paper market, there are going to be new opportunities for the regional bank that does its homework, studies its market, invests in the technology and goes after the commercial-paper business of its mid-to-small sized corporate customers with slid credit ratings. There's a market niche there, and we should move quickly to occupy it.

I'm sure you read about the Senate Banking Committee survey that asked the chief financial officers of the nation's largest nonfinancial corporations what they thought about Glass-Steagall. Seventy-seven percent of the respondents said Glass-Steagall should be repealed. Almost 70 percent said their cost of raising funds would likely drop if banks got into the underwirting of corporate bonds and stocks.

Also, the National Association of Manufacturers announced in early February that its board supports removal of Glass-Steagall like barriers to competition.

So I think there is little debate in the minds of our corporate customers over the fact that corporate America will see significant and lasting cost benefits from repeal of Glass-Steagall.

WHAT ABOUT THE MUNICIPALITY?

Well, bank competition in the municipal revenue bond market will be a huge factor in reducing the costs of public works projects. More player offering more credit to local governemnts can only mean one thing—a lower price on that credit. The underwriting fees are certain to drop. An active secondary market will provide new liquidity and new investors. Taxpayers will get a better deal—perhaps even lower taxes.

And that's why you see groups like the National Governors Association, The National Association of Counties, the National Conference of State Legislatures, the National League of Cities, the American Public Power Association, and the U.S. Conference of Mayors supporting repeal of Glass-Steagall.

Some of the big investment houses have abandoned this business in recent years, particularly where smaller communities are involved. We view this as an opportunity to expand our own public finance business. Again, it will be the smart regional bank that will be able to take an active part in this market.

And finally,

HOW DOES THE INDIVIDUAL CONSUMER FARE IN REPEAL OF GLASS-STEAGALL?

Maybe I can rephrase the question—Can the consumer fare any worse after repeal of Glass-Steagall? We know that the real victim of Black Monday was the small investor. In the rush to satisfy the large, institutional investors last October 19, the stock markets pretty much ignored the small guy's portfolio.

The North American Securities Administrators Association, the organization of state officials who regulate stock brokers within the states, set up a consumer hot line shortly after Black Monday. Complaints poured in about brokers who delayed handling of transactions and provided insufficient information on the riskiness of investments. James Meyer, the group's president, said "The invisible victims of Black Monday and the days since then is the small investor, and there are thousands of them." I wish we could somehow mobilize this army of small investors. Of course, our industry is making some headway in educating the public about the role of banks in the securities business, but we have to accept the fact that ours is not a hot consumer issue yet—although I think it will be as we help more individual consumers to understand the issue.

We can point to the public statement of at least one consumer group as an indication that it supports repeal of Glass-Steagall. On February 9, the 250,000 member group, Citizens for a Sound Economy, announced its support for repeal.

Like many of you represented here, our bank has a very strong retail orientation as well as an active middle market commercial lending activity. The existence of a regional bank retail orientation lends itself to the formations of mortgage-backed securities. The advantage of selling and distributing through a bank are numerous. Not only does it provide an attractive investment vehicle for your customers, the act of originating and selling loans frees up funds so that new loans can be originated.

We also know that with banks underwriting privately issued mortgage-backed securities, the cost to the consumer of financing a house will fall. The National Association of Home Builders has estimated recently that the savings over the life of a $100,000 mortgage could be $1,000. We know that with banks more heavily involved in the mutual funds business, the cost and the availability of investment opportunities for small investors will improve. Furthermore, it goes without saying, that we believe significant profit opportunities are being lost as deposit dollars leave our retail banking system in search of these more diverse investment opportunities. Expanded powers in these areas will only serve to facilitate the more efficient delivery of these services to our customers. I also think the experience of banks providing discount brokerage services proves conclusively that bank competition saves investors dollars.

There's another advantage to repeal of Glass-Steagall that only recently has been discussed. The New York State Bankers Association asked the department of economics at Hunter College, along with the City University of New York, to examine the effects of Glass-Steagall repeal on employment. The study's authors concluded that resulting lower underwriting costs will stimulate U.S. investment and create as many as 30,000 additional jobs nationwide. The study also concluded that there would be other benefits, such as a shift of financing activities from foreign markets to U.S. markets, a slight improvement in U.S. competitiveness abroad, and a small but meaningful reduction in the Federal budget deficit. The study also concludes that riskiness for the basic banking industry will decrease through diversification and placement of risk with investors in the debt and equity markets.

One of Ronald Reagan's favorite stories is about a baseball manager who watched his young, hapless center fielder make a series of errors. Exasperated, the manager picked up a glove and told Eddie to sit on the bench and watch how it's done. On the next play, a ground ball to center field went skipping through the manager's legs. Seconds later, he fell down going after a line drive. Then a fly ball came down on his head.

The manager came in off the field and yelled, "Eddie. You've screwed up center field so badly, no one can play it any more!"

Well, let's hope that the investment bankers haven't done the same to the securities markets. We're ready to enter the business, and some of us are already in it around the margins. There are nearly 4,000 trust departments operating today in commercial banks. Together they manage over $1 trillion in assets. An independent research study (by CDA Investment Technologies, Inc.) confirms that for the fourth year in a row, bank money managers perform as well as or better than investment advisors, mutual funds and the insurance companies.

So the investment performance quality is there. And now every one of us should be explaining to our customers, local opinion leaders, and our elected representatives in Congress that repeal of Glass-Steagall will bring substantial benefits to corporations, municipalities and individual consumers—and the sooner the better!

Additional powers (especially securities powers) will provide all of us the flexibility we need to adjust our various activities to the demands of our particular base of customers and our marketplace. Just as volatile markets have created many changes, we must be prepared to adapt to such market changes.

The growing volatility and deregulation of markets, makes management of risks vitally important. The experience of banks in managing risks certainly places them in a position to handle the risks of expanded powers in an efficient and productive manner.

The investment banking industry has been going through a great deal of turmoil since October 19, occasioned in part by the difficulty of adjusting to reductions in their huge compensation programs and inability to adjust to the changing volatile markets. Bankers are accustomed to *adversity*. We would lend stability and credibility to the investment business.

Earlier I mentioned that we're witnessing what perhaps could be called a financial services perestroika. I'm reminded, however, of what is reported to have been heard on the streets of Moscow in recent months. To the question—"What comes after Perestroika?" people are saying "*perestrelka*." Translated loosely, that means "shoot-out." If you doubt that that can happen in Russia, I suggest you look at what has happened in recent weeks in Soviet Armenia and Azerbaijan. (Ah-zef-by-john)

And if you doubt that a shoot-out can happen in the financial services arena, I suggest you look at the tremendous grassroots outpouring of bank support for ending the Congressional moratorium—and think of the potential for a shoot-out should Congress fail to complete the reform process.

It's one thing to be poised for repeal of Glass-Steagall. I sense that most of you are. It is yet another thing to take an active role in its repeal. On that score, I hope we have all of you with us, because again, the Congress is not going to act without our constant urging. Your trade associations are doing all they can, but they need to hear from every one of you. Or more precisely, your two U.S. Senators and U.S. Representatives need to hear from you.

As citizens, you have a right to ask your Congressional representatives to vote your way on the issues. As a banker, you have a responsibility to do that. I hope when you are called on to lend a hand in the effort, you will be glad to participate. We'll need every one of you.

I would like to add a final comment which is very pertinent, by paraphrasing a section of the Chairman's report to the shareholders in the First Security Corporation 1987 Annual Report. I quote:

"The American banking system has reached a crossroads as to whether we will be allowed to compete in the marketplace in providing financial services or will be relegated to further loss of market share and a declining role as the backbone of the U.S. economy.

Recent developments have substantially eroded the ability of the present banking structure to sustain fair competition. Thus, the requirement to modernize our federal banking laws is critical. The time is right and the need is great! Such modernization would be pro-competitive and pro-consumer. It would strengthen the safety and soundness of the financial system and be good long-term public policy. First Security's level of frustration with present banking regulations is epitomized in the following quote, which has lately become our battle cry:

"No First Security Bank customers
should be forced to walk across the street
to get a financially-related product
from a non-banking competitor
because of an outdated law
passed more than a half century ago."

RONALD F. CLARK: 1988 "GOOD SCOUT" AWARD

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. DIXON. Mr. Speaker, I am very pleased to recognize my close friend, Ronald F. Clark, who is being honored June 24, 1988, as the "Good Scout" for 1988 by the Pathfinders District of Los Angeles.

Ron has been a longtime supporter of the Pathfinders District of the Los Angeles Area Boy Scouts. The Pathfinders include most of the black and Hispanic communities of south-central Los Angeles and provide needed alternatives for our young people.

Ron is being recognized, not only for his contributions to Scouting, but because he is an outstanding role model for our youth. Ron is the owner of Printco, probably the most successful black-owned printing establishment in the United States. Through dedicated hard work Ron has achieved great personal and professional success. Printco was the first black printing establishment to be issued a union label in Los Angeles, and Ron assists charitable and civic organizations throughout Los Angeles.

Ron has contributed a great deal to our community, and he is respected and admired by everyone as a warm and caring individual, who is deeply concerned about young people.

It is a pleasure to join the Scouts, scoutmasters, parents, staff, and supporters of the Pathfinders District in honoring a great man, Ronald F. Clark, with the "Good Scout" Award for 1988.

NEW SOUTH CAROLINA PAPER MILL

HON. ROBIN TALLON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. TALLON. Mr. Speaker, it is with great pride and appreciation that I rise today to recognize the officials of Willamette Industries for their decision to build a $325 million paper mill, using state-of-the-art technology, in Marlboro County, SC. As one of the largest capital investments by an industry in South Carolina during the past decade, Willamette's decision is a fine example of just what can happen when government and business roll up their sleeves and work together.

According to Willamette officials, the Pee Dee River site represents the proper blend of forest resources for raw material, water supply, air availability, and the right community support. That Marlboro met this criteria should not have come as a surprise to anyone. The quality of Marlboro's natural and community resources are no secret. Of particular importance have been the leadership and diligence of the Marlboro County Council, the Marlboro County Development Board, Marlboro County legislative delegation, the South Carolina State Development Board, and South Carolina's Governor Carroll Campbell.

Of course, all of us in the Pee Dee owe a great debt of thanks to Mr. William Swindells, Jr., chairman, president and chief executive officer of Williamette Industries. We look forward to a long and productive working relationship with Mr. Swindells and Willamette.

A vertically integrated company from the forest to the finished paper product, Willamette Industries anticipates a bright future in South Carolina. When Willamette breaks ground this week, it will launch a massive building project that will peak in 1990 with some 1,000 construction workers and 600 temporary jobs. In 1990, when the fine paper machine starts producing, the mill at historic Welsh Neck section of Marlboro County will have over 200 permanent employees.

In addition to its direct economic impact, Willamette will also open new economic doors for our railroads and pulpwood producers. Vast tonnage of hardwood and pine chips will be purchased annually for the Marlboro Mill, which also will consume huge quantities of electricity and natural gas. Some 50,000 semi-truck loads of pulpwood will enter the Marlboro Mill each year, and rail traffic to and from the paper mill near the Pee Dee River will average between 4,000 and 5,000 cars.

The Marlboro Mill will be significant in the paper industry as not many "from the ground up" paper mills are being constructed in America. I see this as a characteristic decision from a company with a record of ingenuity and success. Willamette Industries was founded in 1906 as the Willamette Valley Lumber Co. in Dallas, OR. Now Willamette Industries is a Fortune 500 forest products company with locations across the Nation and a strong earnings record. Its strengths are vertical integration, concentration on a focused, related product range, low-cost fiber and energy efficient facilities, and an organizational structure with a minimum of corporate staff that encourage individual initiative.

Mr. Speaker, Marlboro County is cashing in on cooperation. The partnership between the Willamette Corp., and Bennettsville, Marlboro County and State officials represents a victory for the people of Marlboro and South Carolina. Again, on behalf of all of our citizens, I would like to thank the Marlboro Economic Development Commission and the many individuals who worked unselfishly and tirelessly to demonstrate to Willamette our receptiveness to having new people with new ideas join us in our efforts to make Marlboro County and the Pee Dee an even greater place to live.

DESIGNATING LEYTE LANDING DAY

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. PANETTA. Mr. Speaker, I rise today to introduce a joint resolution to designate October 20, 1988 as "Leyte Landing Day." This will mark the 44th anniversary of the allied forces' return to Leyte in the Philippines to fulfill a national promise and liberate the Philippine people from Japan. Gen. Douglas MacArthur led 420 transports carrying 165,000 men of the U.S. 6th Army and 157 warships manned by 50,000 sailors who fought at Red Beach and represented the largest operation yet conducted in the Pacific war. Through the combined efforts of the Philippine Scouts and the allies the Japanese forces were defeated and the direction of World War II changed.

The events which occurred at Leyte between 1944–45 have not received much deserved recognition. The Leyte landing was as important in the events of World War II as were the events at Normandy on D-day, but I am sure you will agree the recognition of these two events has not been comparable. The Philippine Scouts fought bravely alongside the U.S. Army to defend the vital military and strategic American bases in the Pacific.

In the past the Leyte landing has been commemorated by ceremonies in various parts of the country including California. However, I believe it is time for national recognition of this important event in U.S. history. The dedication and sacrifice endured by these men during World War II should not be forgotten. I urge my colleagues to support this legislation to designate a day for national observance of the return of Leyte.

The following is the text of the resolution:

H.J. Res. 594

Whereas October 20, 1988, marks the 44th anniversary of the landing of allied forces on Leyte Island in the Philippines;

Whereas the allies' courageous return to the Philippines fulfilled a solemn national promise to liberate the Philippine people from the Japanese empire;

Whereas the 420 transports, carrying 165,000 men of the United States Sixth Army, and the 157 warships, manned by 50,000 sailors, which fought at Red Beach represented the largest operation yet conducted in the Pacific War; and

Whereas the combined efforts of Philippine Scouts and allied forces resulted in the eventual defeat of the Japanese forces and changed the direction of the war in the Pacific: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 20, 1988, is designated as "Leyte Landing Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

MORE THAN COVERT CAN ENDURE?

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. HYDE. Mr. Speaker, featured in the commentary section of today's editions of the Washington Times is a discussion of the impact that the 48-hour notification bill will have on the effectiveness of some of the more sensitive covert operations of this Government. On this, the eve of an important committee vote on the legislation, I commend the following essay to my colleagues for their serious consideration:

[From the Washington Times, June 21, 1988]

MORE THAN COVERT CAN ENDURE?—HOW 48-HOUR RULE WOULD IMPAIR THE UNITED STATES

The House of Representatives soon will consider whether to follow the Senate's questionable "lead" in decreeing that, without exception, Congress' intelligence committees or top leadership must be informed of every covert action within 48 hours of presidential approval.

As hearings have shown, many present and former policy officials, persons of widely varying political affiliations, strongly reject such inflexibility and congressional micromanagement of foreign policy. They cite the need to protect at least temporarily a very few of the most sensitive operations from security leaks, as well as the dubious constitutionality of the proposal.

So corrosive has the permissive culture of "leaking" become that it materially contributed to the disastrous Iran escapade. Adm. John Poindexter testified that in addition to keeping even the congressional leadership in the dark for more than a year, he also deliberately minimized information given to top Cabinet and White House officials, and kept few documents or records of key meetings.

This is corroborated in the just-published memoirs of Don Regan, then White House chief of staff, who writes that unauthorized disclosures "had achieved such epidemic proportions that the inner circle was afraid to take notes lest they read them the next day in the newspapers." Mr. Regan concludes that "in fact, the root of the scandal may well lie in the fact that McFarlane and Poindexter and their assistants were, in a sense, driven mad by leaks."

The result was prolonged pursuit of an ill-considered and politically dangerous policy which suffered grievously from lack of full consideration and thorough periodic review. The paucity of records also contributed to later confusion and charges of a deliberate cover-up.

Some airily dismiss these security concerns as figments of Adm. Poindexter's paranoia. But every recent administration has quickly become appalled by the pervasiveness of leaks harmful to U.S. foreign policy and intelligence capabilities.

Moreover, despite the admiral's extreme precautions, the Iran operation indeed was soon exposed, originally in some Jack Anderson columns. It finally unraveled because of a leak which, for a change, occurred in a foreign newspaper.

With increasing frequency, highranking intelligence officials testify before the House Intelligence Committee decrying the human, intelligence and policy damage inflicted by injurious leaks. Lately, some have even gone public in a campaign to point out the harmfulness of an avalanche of unauthorized disclosures.

In this effort, they are hampered by an inability to cite examples, for to do so would confirm the authenticity of published material and heighten the damage. A cursory glance at the daily headlines, however, should convince the average citizen that sensitive, intelligence-related issues have become regular media fare. One begins to suspect that the best way to publicize an issue is to stamp it "Top Secret" and wait for its predictable appearance in the media.

Nonetheless, members continue to press the 48-hour legislation, a key assumption being that Congress can indeed be trusted *in every instance no matter what the risk.*

Let us be clear about the facts here. Whatever its reservations about congressional reliability, each administration normally has swallowed its concerns and freely provided the legislature a wealth of classified information. The intelligence committees have controlled the oversight process for more than a decade now.

As CIA Deputy Director Bob Gates recently observed, the availability of classified information to the intelligence committees in particular, and to a lesser extent to Congress in general, has increased exponentially over these years, a factor which allows them considerably greater ability to probe and question administration foreign policy than Congress ever had before.

Prior to the Iran-Contra initiatives, there had been only two cases in which House and Senate leadership, rather than both full committees, were initially informed of a covert action.

There have been only four cases in which notification to Congress was delayed. Three occurred during the Carter administration. All involved attempts to retrieve U.S. citizens hiding in Iran or held hostage in Iran or Lebanon. In each of these cases, the administration feared deaths could result from media leaks, and knowledge of the operations was also highly restricted within the executive branch.

In three of those instances, although notification was delayed three to six months, the Congress heartily supported the administration.

In all four cases, the administration intended to notify the Congress eventually and was legally required to do so, but it could not be determined from the outset how long notification might be delayed. Thus, only one case—the Iran-Contra affair—has raised serious concerns about notification.

It is a precedent that is most unlikely to be repeated. Given heightened congressional sensitivities and the personal and political pain caused by the Iran-Contra investigation (exemplified by the attempted suicide of one policy-maker, financial burdens for them all, the destruction of reputations, and, in effect, the crippling of the Reagan administration during its final two years), it is beyond imagination that any future administration again will temporarily withold notification on an issue of similar potential controversy.

Moreover, as the bipartisan Tower Commission report noted, the Iran debacle occurred largely because existing procedures for handling covert action were ignored, not because new procedures were needed. The administration also has instituted additional precautions, such as an automatic review every 10 days if the president determines that notification to Congress must be delayed.

Congress will suffer a Pyrrhic victory if it wins on this issue. The Democratic majority will find succeeding presidents hamstrung in grappling with future hostage cases. Does anyone predict an end to hostage taking? And if, in one of those instances, word of covert initiatives leaks out prematurely, possibly triggering the death of a hostage or agent, it is Congress that will fall under a dark cloud of suspicion. At that point, the diminishing mutual trust essential to effective oversight will suffer yet another grievous blow.

UNITED STATES-JAPAN TRADE ACCORD

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. IRELAND. Mr. Speaker, the United States and Japan, after many months of negotiations, have concluded an agreement which will increase our citrus, as well as beef, exports to Japan. I want to commend Ambassador Clayton Yeutter for the fine work he and his entire staff did to bring this agreement to fruition.

Initially, the United States position was for total liberalization of the Japanese quota system as it pertained to citrus and beef exports. Four years ago, at the conclusion of the existing agreement (1984–88), the Japanese conceded that their quota system is illegal and that the Government of Japan would do away with it in 1988. Once again the Japanese Government failed to live up to one of its international obligations and refused to drop its quota system.

I, along with other Members of the Florida delegation and the Florida citrus industry, filed what is known as a 301 investigation with the United States Government which immediately initiated an investigation into the unfair trading practices utilized by the Government of Japan. In addition, our Government filed a formal complaint with the GATT [General Agreement on Tariffs and Trade] organization that the Government of Japan had failed to live up to its obligations and was in violation of the international treaties to which it had agreed. Fortunately, we did not have to pursue the 301 case or the GATT complaint further, but have been able to settle this dispute between our two countries.

While the new agreement is short of the immediate liberalization that we had been seeking, I welcomed our Trade Representative's announcement as good news for Florida citrus producers. My district, Florida's 10th, includes Manatee, Polk, Hardee, DeSoto, and part of Osceola Counties and is the largest citrus producing region in the Nation. Prior to my election to Congress in 1976, I was in the banking business in Florida, during which time I helped to finance many of those involved in the growth and development of the citrus industry. As a result, I have come to know the industry quite well not only from a financial perspective, but from the marketing and trade aspects as well.

I know only too well what an arduous road we have traveled when talking trade with the Japanese. Since my first term in Congress, I have worked without trade negotiators pressing them to support total liberalization of the citrus trade between the two countries. Citrus and beef quickly became, for the American people, major symbols—benchmark indicators of the willingness of the Japanese Government to commit itself to the principles of free and fair trade between friends.

At the end of the previous agreement which expired in April 1988, Japan imported 8,500 tons of frozen concentrated orange juice, and 126,000 metric tons of oranges. Under the

terms of the new agreement, during the 1988-90 period market access for fresh oranges will be expanded by 22,000 metric tons yearly, reaching 192,000 metric tons in 1990. In addition, as of April 1, 1991, imports of fresh oranges will be permitted in unlimited quantities.

The potential for increased United States exports to the Japanese market is substantial. The export of frozen concentrated orange juice is particularly important for our Florida growers. As much as 60 to 80 million gallons a year could eventually be exported to the Japanese.

In addition to the quota increases and eventual liberalization, the Japanese agreed to a reduction in the current tariff on grapefruit. The current two-tiered tariff of 25 percent and 12 percent off season is being reduced to 15 and 10 percent respectively.

On the beef issue, Japan's market for imported beef will increase 60,000 metric tons per year, reaching 394,000 metric tons in 1990. By 1991, Japan's beef imports should nearly double from current levels.

While we did have to make concessions to reach this final agreement, I believe overall the result bode extremely well for our domestic citrus and beef industries. Both have gained access to a potentially tremendous market and I am positive that once the Japanese consumer has the opportunity to purchase these products at affordable prices, they will be extremely grateful for their Government's compromise on these issues.

GORBACHEV SHAKES HIS FIST AT PAKISTAN

HON. CHARLES WILSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. WILSON. Mr. Speaker, I would like to bring to the attention of my colleagues an article which appeared in the Washington Times on Tuesday, June 14, entitled "Gorbachev Shakes His Fist at Pakistan." As many of you know, I have just returned from a week in Pakistan, during which time I spoke extensively with Government officials concerning the recent dissolution of the National Assembly as well as the war in Afghanistan.

I share my colleagues' concerns about the continued progress toward full democracy in Pakistan. During my discussions, I made those concerns clear to the officials of the Government of Pakistan. I fully believe that the Government will hold elections which will be free, fair and partybased.

With regard to Afghanistan, however, I would like to bring to my colleagues' attention the numerous threats which Pakistan has received from the Soviet Union due to its commitment to the Mujahidin. Pakistan continues to provide supplies to the Mujahidin in their continued struggle to expel the Soviet occupation army. For their continued support and principled stance on the Soviet occupation, Pakistan has received numerous threats from Soviet leader Gorbachev and other Soviet officials.

The article says that Gorbachev and his puppet leader in Kabul, Najib, warned of "resolute retaliatory steps" unless Pakistan halts aid to the Mujahidin. I do not think there is much doubt as to the meaning of this statement. The Soviets are threatening to increase their campaign of terror against Pakistan unless Pakistan abandons the Mujahidin. In the past, the Soviets have directly bombed Pakistan in cross-border raids and have conducted an extensive terrorist campaign inside Pakistan which resulted in thousands of civilian casualties.

Our present focus on democracy in Pakistan should not make us lose sight of the fact that Pakistan has played—and continues to play—a key role in support of United States national security interests as the conduit for support for the Mujahidin. The United States held firm in the Geneva agreement and refused to abandon its commitment to the Mujahidin. We should support our friend and ally at this time as Pakistan faces blatant Soviet threats for this very same commitment.

[From the Washington Times, June 14, 1988]

GORBACHEV SHAKES HIS FIST AT PAKISTAN

(By Richard Beeston)

Soviet leader Mikhail Gorbachev yesterday stepped up threats against Pakistan, warning of "resolute retaliatory steps" unless Pakistan halted aid to the Afghan resistance.

U.S. officials called the statement the strongest language so far used by the Kremlin against Pakistan in its efforts to protect the collapsing Afghan communist regime.

The threat was issued jointly by Mr. Gorbachev and Kabul's President Najibullah, who was in Moscow on his way home to Afghanistan from Cuba.

Their statement said that failure of the 50 United Nations monitors of the Geneva accords on Afghanistan to stop Pakistan's violation of the agreement "would make it necessary to take the most resolute retaliatory steps" against Pakistan.

U.S. officials said yesterday the Soviet leaders "clearly don't like what's happening" in Afghanistan as rebel forces take over from the withdrawing Soviet troops with little resistance from the Afghan army. The statement by Mr. Gorbachev may be an effort to try to reassure Najibullah, an official said.

Mr. Gorbachev might be showing his frustration, said one official. But he said there was no way 50 U.N. personnel, who were in Afghanistan and Pakistan to monitor Geneva accords, could stop the supply of arms to either side.

U.S. officials would not predict what form of retaliation was being threatened against Pakistan. But in the past the Soviet-backed Afghan air force has attacked Pakistani towns and villages, and the KGB-trained Afghan security service has been carrying out a widespread campaign of sabotage and terror inside Pakistan.

The Soviet troop pullout from Afghanistan has slowed down, but the goal of the withdrawal of half of the forces by mid-August is still "clearly achievable," the State Department said yesterday.

"They are committed to the withdrawal under the Geneva accords. Their problem is that the regime is falling apart faster than they expected," said an administration official.

U.S. officials, however, are showing no concern that Moscow might delay or halt its pullout over charges that the United States and Pakistan have violated the Geneva accords by continuing to supply the Afghan resistance with arms. "They have made the political decision," an official said. "The people in the Soviet Union expect it and want it. They have no other alternative."

Most of the new military supplies reaching the mujahideen resistance are not coming from weapons captured from Afghan government forces, claimed another U.S. official. "They thought they could pull out and leave government troops to hold the positions, but it is not working out that way. It is not as easy as they thought it would be."

Although Soviet warnings about the consequences of continued violations of the Geneva accords have recently become more frequent and strident, Moscow has stopped short of officially threatening to halt the withdrawal.

"We expected this maneuver of blaming the U.S. and Pakistan for the mess, but it remains in their best interests to withdraw," the official said. He estimated that only about 12,000 to 15,000 of the 120,000-man Soviet occupation force had left so far. But by stepping up the number over the next two months, the Soviets would still be able to meet their obligations to have the first half out by Aug. 15, he said.

U.S. officials contend that the collapse of government forces so early in the pullout is becoming an embarrassment for the Soviets.

Meanwhile, a senior Pakistani official said yesterday that Pakistan had told the mujahideen that attacking withdrawing Soviet forces was "a dumb thing to do."

Pakistan yesterday rejected charges that it had violated the Geneva accords. Soviet Foreign Minister Eduard Shevardnadze formally made the charges to the United Nations last week and the Soviet Union lodged a protest with the Pakistani ambassador to Moscow.

In an address to the U.N. General Assembly yesterday, Pakistani delegate Shah Nawaz said, "The world will not be surprised if a crumbling regime makes a desperate bid to retain the protective umbrella of foreign troops." But he predicted that the Soviet leadership would oppose reversing the process.

A U.S. official said that as long as the Soviet Union continued to provide military aid to the Kabul regime, the United States was not going to stop helping the resistance. The Soviet Union has spoken of leaving $1 billion in arms behind for the government forces.

MIAMI REPORT II: FOCUS ON LATIN AMERICA

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. FASCELL. Mr. Speaker, it sometimes may seem that the number of reports by "blue ribbon" committees and think tanks these days grows in proportion to the sales of word processors. The result is that even the boldest, most thoughtful and pragmatic recommendations on public policy issues of critical importance can be lost in the information din that surrounds us.

A new report on United States-Latin American relations stands above the crowd and deserves closer attention. To my mind, Miami

Report II: New Perspectives on Debt, Trade, and Investment—a Key to United States-Latin American Relations in the 1990's should be required reading for anyone concerned about the future of democracy in this hemisphere.

The report was prepared by a number of international minded residents of Miami, broadly representative of the city's business, financial, professional, and academic communities—people with hands-on experience in Latin America. In 1983, this group issued the first Miami report, listing specific policy recommendations for the U.S. Government. That report correctly predicted the continued growth of Latin American debt and inadequate economic performance to the detriment of the countries involved and to the United States. Miami Report II builds on the first report and focuses on economic matters, and related issues of drugs and immigration.

Miami Report II makes the valid point that the economic problems of Latin America need much greater and more sustained United States attention. Our preoccupation over Central America, however understandable, has overshadowed the consequences of the continued economic morass all over Latin America, which threaten hard-won democratic advances elsewhere. The muddling along case-by-case approach to the debt crisis will not work over the long haul.

Wisely, Miami Report II's recommendations for U.S. policies steer clear of expensive new aid programs and focus on investment, debt, and trade policies. Interesting suggestions for U.S. regulatory changes to enhance debt-equity swaps are made. The report empahasizes the critical importance of sound fiscal policies, in creditor as well as debtor nations.

Mr. Speaker, in addition to distributing copies of Miami Report II to our colleagues, I would like to call special attention here to the thoughtful recommendations made by the report, which are of special concern in this Presidential election year.

SUMMARY OF RECOMMENDATIONS

GENERAL

(a) U.S. citizens should demand a better definition from presidential and congressional candidates on their positions concerning North-South relations in the Western Hemisphere.

(b) The U.S. government, media, and private citizens should promote a better understanding in the United States of the inseparability of democracy, social justice and international economic cooperation in formulating a consistent United States policy toward the region.

(c) Congress should require the U.S. Treasury and Federal Reserve System to consider explicitly the impact on Latin American nations of fiscal and monetary policies that can have a profound effect through changes in real interest rates, in the dollar, and in commodity prices.

INVESTMENT

(a) The countries of Latin America and the United States should construct a legislative environment that will facilitate more extensive use of debt-to-equity and loan-to-bond conversions and other market mechanisms to convert debt into productive capital in Latin America.

(b) The U.S. Government and all its agencies shall strongly push for economic reform by Latin American governments to improve investment climates.

(c) Governments and private-sectors should stimulate country-specific capital funds, regional capital funds, privatizations of large state enterprises and other innovative and responsive means to gain access to world capital markets and repatriate flight capital.

(d) Latin American governments should use trade liberalization and regional integration plans to stimulate domestic and intra-regional investment.

(e) Congress should extend and revitalize the Caribbean Basin Initiative and make it more responsive to the needs of the region.

(f) The United States should fund additional capital for the Inter-American Development Bank and for the World Bank.

DEBT

(a) The U.S. Government should reduce interest rates on lending by private international banks in the United States through appropriate fiscal and monetary policies.

(b) Banks should encourage securitization of some debt.

(c) The U.S. Government should consider modifying Regulation K to allow U.S. banks greater involvement in trade, relaxing rules as to stock ownership and debt-equity conversions.

(d) Commercial banks should continue the processes of discounting debt in secondary markets and of partial writeoffs.

(e) Banks should reduce spreads and various costs of debt service.

(f) The U.S. Government should cut the interest rates on its existing development loans.

(g) The United States should encourage loans-to-bonds swaps with backing from an international agency, as proposed in the Omnibus Trade and Competitiveness Act of 1988.

TRADE

(a) U.S. citizens should question the need for protectionist measures at every stage; they should encourage the next Administration to continue the policy of resistance to protectionism.

(b) USAID and private banks should design programs jointly to improve and encourage management and technology development in Latin American companies, with the aim of enhancing productivity and levels of trade.

(c) Congress should re-allocate East Asian textile quotas from countries with trade surpluses with the United States to Caribbean Basin countries in the CBI.

(d) The U.S. Special Trade Representative should negotiate aggressively to solve problems with intellectual property issues.

(e) The Executive Branch should improve the regulatory climate to make the CBI more attractive as a vehicle to stimulate trade.

(f) The U.S. Government should improve level of staffing of federal agencies related to Latin America.

(g) The U.S. Government should increase CBI countries' sugar quota to the region's existing capacity and phase out subsidies to U.S. sugar production.

(h) The U.S. Government, other governments, and private sectors should encourage Latin American countries to abandon certain trade-discouraging practices.

SPECIAL CONCERNS

Immigration

1. The next Administration should define and develop a coherent policy toward political refugees and seekers of political asylum. This policy should be consistent with international legal principles.

2. The Congress should consider a special additional immigration quota for the Caribbean islands, to promote a more orderly immigration pattern.

Drug trafficking

1. The United States and Latin America must regard drug trafficking as a mutual problem requiring common solutions. Recriminations against "the suppliers" or "the market" from one side or another are not conducive to solutions.

2. A full study must be made of the impact of drug trafficking on Latin American countries themselves; assistance must be forthcoming from the United States consistent with their own efforts.

3. Vastly more resources must be dedicated to dealing with the demand side, i.e., in the United States in programs of education and publicity aimed at curbing drug use.

International education

1. State legislatures and school districts must draft and implement legislation and provide appropriate levels of funding to implement measures designed to promote language teaching and the internationalization of curricula, beginning at the primary level. A special focus on studies of Latin America should be an initial goal.

2. Congress must strongly support funding of the USAID and USIA scholarship programs designed to bring Caribbean Basin students to the United States.

3. Congress should pass the Inter-American scholarship Partnership Act, which would provide federal matching funds to states which offer scholarships to needy students from CBI countries.

DEATH OF A FRIEND

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. DYSON. Mr. Speaker, I rise with deep sadness to pay my respects to my good friend Frank Drozak, who passed away June 11 at the age of 60. Mr. Drozak was the president of the Seafarers International Union of North America and was also president of the AFL-CIO's maritime trades department. He will be sorely missed.

I knew Frank Drozak for almost 20 years in a professional capacity. He always took the time to help me understand complex marine issues and proved himself to be an experienced speaker. Through his interest in maritime affairs, he became very involved in these areas and contributed much to the Seafarers International Union. He also was a member of the AFL-CIO executive council and had chaired the general president's offshore committee. Mr. Drozak had served on the International Labor Organization's joint maritime commission and had been a member of the national board of the A. Phillip Randolph Institute, besides heading several organizations which were affiliated with the Seafarers.

Frank Drozak's impressive history with maritime affairs also include his involvement in the Congressional Maritime Caucus as a labor advisor and in the Public Advisory Committee on the Law of the Sea as the subcommittee chairman. He was a member of the board of governors of the National Maritime Council

and had been an adviser to the office of the U.S. trade representative. He also had been honorary chairman of the American Trade Union Council for Histadrut and was a member of the Navy League. I commend Frank on his extensive involvement and dedication in these important areas.

Frank's contribution toward marine affairs began at the age of 16 in Coy, AL when he took a job in a shipyard in Mobile, AL and later served with the Merchant Marine during World War II. Since 1944, he had been active in the Seafarer's Union, first as an agent in Philadelphia in 1964, then as the international vice president in San Francisco in 1965. He moved to the old SIU headquarters in Brooklyn, NY in 1972 as the union's executive vice president. He held that post until succeding the late Paul Hall as international president.

Frank Drozac was a wonderful man with many admirable qualities and we will miss him greatly. His contributions to maritime affairs have been invaluable and we will miss his presence in this department.

THE VIETNAM WOMEN'S MEMORIAL

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LANTOS. Mr. Speaker, today the distinguished chair of the Subcommittee on Libraries and Memorials, the gentlewoman from Ohio [Ms. OAKAR], presided at hearings to consider H.R. 3628, authorizing the Vietnam Women's Memorial Project to establish a commemorative statue to honor women of the U.S. Armed Forces who served in the Vietnam War, and House Joint Resolution 502, authorizing the Vietnam Women's Memorial Project to establish a memorial on Federal land in the District of Columbia to honor women who served in the U.S. Armed Forces during the Vietnam era.

I placed a statement in the record of that hearing expressing my strong and enthusiastic endorsement of that legislation and urging the support of our colleagues in the House. Mr. Speaker, I insert my statement on that legislation in the Congressional Record:

STATEMENT OF HON. TOM LANTOS, MEMBER OF CONGRESS FROM CALIFORNIA, BEFORE THE SUBCOMMITTEE ON LIBRARIES AND MEMORIALS, JUNE 21, 1988

Madam Chair, I am most grateful for this opportunity to present my views on H.R. 3628, authorizing the Vietnam Women's Memorial Project to establish a commemorative statue to honor women of the U.S. Armed Forces who served in the Vietnam war, and House Joint Resolution 502, authorizing the Vietnam Women's Memorial Project to establish a memorial on Federal land in the District of Columbia to honor women who served in the U.S. Armed Forces during the Vietnam era.

Madam Chair, I commend you and the members of your subcommittee for holding this important hearing on these two bills. There is a clear need for recognition of the critical role women played during the Vietnam conflict. Despite the attention that has been given to the Vietnam war, the role of women in that conflict has largely been ignored. In fact, as you know, Madam Chair, there are no monuments recognizing the contributions women have made to any American war. It is time for us to change that.

Over 250,000 women served in some capacity in the Vietnam war—10,000 of those in Vietnam itself. But their contribution cannot be measured by numbers alone. The women who served in Vietnam were primarily nurses; however, they were much more than that. In addition to providing the necessary physical care to the wounded—which was a difficult and in some cases a dangerous task—they also provided psychological and moral support in this difficult war. As one woman veteran recently noted, the women were the "sympathetic sister, surrogate mother, and girl-next-door" to the soldiers, who were so young and so far from home.

Madam Chair, it is most appropriate and fitting that the heroism of these many fine women be recognized, as these two bills propose to do. The Vietnam Women's Memorial Project was established in 1984 to accomplish this. The adoption of the legislation which your subcommittee is considering today is the next essential step in the important process of granting this long-overdue honor.

I fully support these bills and urge my colleagues on this committee to consider them favorably so they can be acted upon quickly by the House. Last week, the Senate overwhelmingly supported similar legislation.

A memorial to the women who served in Vietnam will add an important dimension, to complete and enrich the moving Vietnam Memorial. This memorial, a place for reflection and reconciliation, will be enhanced by recognizing the important role women played in the Vietnam conflict. I urge this subcommittee and our distinguished colleagues in the House to support passage of these bills to establish this long-overdue monument.

LONG-TERM HEALTH CARE: THE MOST SERIOUS HEALTH ISSUE

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. ANDREWS. Mr. Speaker, a serious question that everyone must face is what we would do if we lost the ability to take care of ourselves and our loved ones. Many of us know of people who used everything they own to pay for an illness or disability that left them bedridden for years on end. In fact, long-term care pushes 1 million American families into bankruptcy each year. Long-term care is the most serious issue facing Congress.

The problem will not solve itself—it will only get worse. Over the next 40 years, our population over 65 will double, and the number of elders over 85 will triple. Today, 6.3 million elderly are disabled. By the year 2030, the number of disabled elderly will likely exceed 15 million. That is a 140-percent increase.

Our current long-term care programs were not designed to handle this problem. The largest Federal program for long-term care, Medicaid, requires the participants to use most of their savings before they receive assistance. In many States, including Texas, the disabled must use all but $1,900 of their savings before Medicaid pays for nursing home care. The result of this policy is that about 90 percent of single elderly people become impoverished within a year after they enter a nursing home, which cost an average of $22,000 per year.

The Catastrophic Illness Protection Act recently passed by Congress will help, but it does not solve the problem. It will expand Medicare coverage of nursing home care from 100 days to 150 days per year. It also allows couples with one spouse in a nursing home to keep more in income and more in assets while they are disqualified from Medicaid. But the main purposes of this legislation is to protect those with high medical bills above what Medicare currently covers.

Congressman CLAUDE PEPPER, a highly respected spokesperson for the elderly, has taught us the elderly do not want to become a burden to their families. I commend his efforts on behalf of the elderly. He knows the high value that Americans place on the dignity of living independently for as long as we are able. We cannot underestimate the importance of remaining at home for the emotional health of the ill and disabled.

A home health care program offered by Mr. PEPPER was recently acted on by the House of Representatives. A motion to consider the bill was defeated by a vote of 243 to 169 in part because it had not been reviewed by the appropriate committees. The vote does not reflect a decision to ignore the problems of the elderly.

Both home health care and nursing home care are part of the long-term health issue. But this bill did not cover nursing home care. It would not have halted the financial ruin of American families that have to pay for nursing care. Although it was not considered by the House, it served the need to raise the issue.

Congress should adopt legislation to provide a comprehensive solution. It should be a top priority for the 101st Congress. The new legislation should be based on four principles:

First, long-term care should not cause bankruptcy. Recent surveys show that over 80 percent of all Americans support legislation on long-term care. some form of insurance should be available to protect everyone from this financial risk.

Second, home health care should be available as an alternative to nursing home care. A seriously disabled person should not be forced to leave home until they choose to or they are forced by medical reasons. The home care industry has been growing to meet this demand. Home health care agencies now provide more intensive medical and nursing services than do nursing homes. But nursing home care should also be readily available when it is needed.

Third, the response to this problem should come from both the public and the private sectors. Neither the health insurance industry nor the Federal Government has the resources to tackle the issue on their own. The need to reduce the Federal deficit reduces the ability of the Government to create new entitlement programs. At the same time, private health insurance for long-term care has not been forthcoming. It paid for only 2 percent of the non-Government spending for nursing

homes. A public-private partnership is clearly needed to overcome these obstacles.

Fourth, the cost of this program should not be borne entirely by the elderly. Illnesses requiring long-term care disable the young and old alike. The most difficult aspect of long-term health care debate is how to finance the program. Whatever solution is found must ensure that the program does not increase the Federal deficit and that it is fair.

Long-term health care legislation should be the result of the unique blend of policy and politics that we have in America. It is legislation that the people of this country clearly want. It is legislation that should be the result of the best minds in the country, hearings, studies, and discussions.

Long-term health legislation will help all of us. Disability or chronic illness can strike anyone. But very few of us could save enough to pay for the necessary care. Long-term health care legislation can help ease this burden for those of us who have a disability or a chronic illness that requires long-term care and for those of us who will need long-term care in the future.

JOHN DUNCAN, WE MISS YOU

HON. JAMES H. (JIMMY) QUILLEN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. QUILLEN. Mr. Speaker, my friend, JOHN DUNCAN, announced May 27 that he will not seek a 13th term in the House because of ill health. Shortly after this unhappy announcement, his son, Knox County Criminal Court Judge "Jimmy" Duncan, Jr., filed his candidacy papers for the Republican Party nomination for the U.S. Congress to succeed his father as Tennessee's Second Congressional District Representative in Congress. As an old friend of JOHN, his lovely wife, Lois, and their wonderful family, I wish to express a few thoughts on these unexpected events.

The first is that JOHN DUNCAN is my close, personal friend, and he is a fighter. He continues to fight to regain his health so he can return to Washington to be with us for the remainder of his term, and I hope his colleagues here in the House will remember him in their thoughts and prayers.

It has been my privilege to know JOHN DUNCAN for many, many years, and we have served together here in the House for 24 years representing adjoining districts in east Tennessee. His record of accomplishment and service to his constituents is legendary throughout the Second Congressional District. No constituent's problem was ever too small or unimportant for him to take up and turn around for the benefit of the person who asked him for help. Most of his colleagues here associate him with his diligent and effective work over a great many years as a member of the House Committee on Ways and Means, where he has served as ranking Republican Member since 1985. Over the years, I have gone to JOHN for advice and assistance and he has never failed to come through with sound advice and effective assistance. This is so because of his sound and steady judgment, abundant common sense, and practicality as well as his great heart and willingness to help.

So, with his retirement announcement after 24 years of outstanding service in the House, he has left big shoes to fill. For my money, or you might say, my 2 cents' worth, there is only one person big enough to fill those big shoes—his son, John "Jimmy" Duncan, Jr.

I have absolutely the highest regard and affection for Jimmy Duncan, whom I have known since he was a boy. His father is justifiably proud of him and the trail he has blazed in life. After a solid academic and practical training in law, Jimmy Duncan has served as a Knox County Criminal Court Judge since 1981. He has built a fine reputation for firmness, fairness, and compassion on the bench in administering justice to those brought before his court. He is a strong Republican Party man who knows the Second Congressional District and its people as few do, and he is an energetic and effective worker who will represent them well in the Congress.

JOHN DUNCAN'S shoes are truly big ones to fill, but I am convinced Jimmy Duncan is the man who can do so. Because of this, I am proud to support him with great enthusiasm in his campaign for election to the 101st Congress.

At the same time, I salute Tennessee's Second District Congressman, my friend, JOHN DUNCAN, and wish him well in his fight against cancer. I know our colleagues in the House join me in saying to JOHN that we are thinking of you and you are in our prayers. We miss you, and we hope to see you back on the House floor soon. We need your leadership.

And to Jimmy Duncan, my best wishes as you begin to take up the challenges of campaigning for a seat in the Congress where your father serves with great distinction and the respect and affection of those who know him.

IN PROTEST OF THE EXTRADITION OF JOSEPH PATRICK DOHERTY

HON. GEORGE J. HOCHBRUECKNER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. HOCHBRUECKNER. Mr. Speaker, I rise to protest the decision of Attorney General Edwin Meese to extradite political prisoner Joseph Patrick Doherty to the United Kingdom. Mr. Doherty, who was convicted in 1981 of killing a British Army captain in Belfast, escaped from a Northern Ireland prison and fled to the United States. The British Government immediately initiated extradition proceedings following his June 18, 1983, arrest in the United States.

In 1984, the United States District Court for the Southern District of New York after a full hearing denied the British request to extradite Mr. Doherty to Northern Ireland. The court found that his offenses were political not civil. In 1986, after judicial review, an order to deport Mr. Doherty to the Republic of Ireland was issued. This decision by the Board of Immigration Appeals was to end 4 years of litigation during which Mr. Doherty remained incarcerated in the United States without being charged of a crime in this country.

Archbishop Cardinal John O'Connor of the Archdiocese of New York, Bishop John McGann of the Diocese of Rockville Centre, as well as several Irish-American organizations have protested this situation. Members of the ad hoc congressional Committee for Irish Affairs, of which I am a member, sent a telegram to Attorney General Meese on July 14, 1987, urging him to uphold the decisions of both Immigration Judge Howard I. Cohen and the Board of Immigration Appeals which called for the deportation of Mr. Doherty to the Republic of Ireland.

On June 14, 1988, shortly before the fifth anniversary of Mr. Doherty's incarceration in the United States, Attorney General Meese overruled the decisions of these courts and ordered the extradition of Mr. Doherty to the United Kingdom. On June 16, I joined with a bipartisan group of 14 members of the Committee for Irish Affairs in issuing a statement strongly criticizing Attorney General Meese's decision. We declared, "The Attorney General's decision did not address issues of law—instead it was purely a political decision aimed at not jeopardizing relations with Great Britain over the problems in Nortthern Ireland." We concluded that Attorney General Meese "ignored the rulings of Federal judges which established that his crimes were political and which would bar extradition." Joe Doherty has become, thanks to Mr. Meese, a "political sacrificial lamb with no regard to any rights he might have under the law."

Mr. Speaker, I strongly protest the decision of Attorney General Meese to extradite Mr. Doherty to Great Britain and I urge him to reconsider this decision. The extradition of Mr. Doherty absolutely disregards the rulings of two U.S. courts and it forces our legal system to become entangled in diplomatic concerns. According to the U.S. Constitution, the executive and judicial branches of our Government are designed to operate separately and fairly. By protesting the Attorney General's decision, this separation can be upheld, and fair treatment can be ensured for every individual under the law of the United States.

INTRODUCTION OF LEGISLATION TO PROVIDE EQUITY FOR RAILROAD RETIREES

HON. PAT WILLIAMS

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. WILLIAMS. Mr. Speaker, today I am introducing two separate bills which will help provide equity for railroad retirees and other retirees so they are on a par with Social Security beneficiaries.

The first bill—the Railroad Retirement Medicare Equity Act of 1988, will amend title XVIII of the Social Security Act to provide the same limitation on increases in deductions for Medicare part B premiums from railroad retirement annuities as currently applies to Social Security. What this means is that any increase in

part B premiums for Medicare cannot exceed the amount of the cost-of-living increase in the annuity. Legislation has already been enacted providing this consideration for Social Security recipients—this bill would provide equity for railroad retirees.

The second bill—the Retirement Payment Delivery Assurance Act of 1988, would provide for the timely delivery of certain Federal pension checks when the day normally scheduled for delivery falls on a weekend of a legal public holiday. In 1977, Congress authorized early delivery of Social Security and Veterans' Administration checks in these instances. This bill provides for the same timely delivery for railroad retirees, civil service retirees, military retirees, black lung beneficiaries, Foreign Service retirees, and Central Intelligence Agency retirees.

The Post Office receives Federal benefit checks for delivery on a specified date, usually the first or the third of the month. Because of the 1977 legislation, Social Security and veterans beneficiaries now avoid potential hardships of up to 3-day delays caused by Monday holidays. Unfortunately, the same provision does not apply to other retirees—numbering nearly 5 million. This legislation corrects this inequity.

I urge my colleagues to join me in supporting these two bills which will provide some important relief for our retirees.

A TRIBUTE TO CHARLES NEIL HAVENS

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. GALLEGLY. Mr. Speaker, I rise today to honor Charles Neil Havens of Simi Valley, CA, as he retires after 30 years of service in the U.S. Postal Service. Adding to the significance, Neil's retirement brings to a close 76 years of mail service by the Havens family.

When Neil's grandfather, Charles A. Havens, became the first carrier to deliver mail in the then-tiny hamlet of Simi, he served 45 patrons on an 11-mile rural route for the grand sum of $48.50 a month.

A year later, in 1913, his eldest son, Lester, took over the route and carried the mail until he enlisted in the Army in 1917. Lester's brother, Charles R. Havens, then was appointed to replace him, but he, too, soon went into the Army. Their father again carried the mail while his sons were away.

Lester did not return from the war, and "Charlie" became the permanent rural carrier, a post he filled until 1953, when he became postmaster. At that time, just 35 years ago, he was still serving the one and only rural route, though it had grown to 67 miles.

Today, in comparison, there are about 170 postal employees and some 60 routes to serve a city that now numbers close to 100,000 people.

When Charles Havens retired, Neil chose to continue the family tradition, and was appointed, by competitive examination, as postmaster in July 1958, and he served the Postal Service well as the community continued to grow.

Mr. Speaker, I ask that my colleagues join me in wishing Neil Havens many more years of good health and great success.

RAYMOND McCLELLAN OF TUCSON, AZ, CELEBRATES 100TH BIRTHDAY

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. KOLBE. Mr. Speaker, I rise today to recognize and congratulate a remarkable individual from Tucson, AZ. Raymond McClellan recently passed a great milestone in life—the celebration of his 100th birthday.

Mr. McClellan was born in Greene County, PA. He moved to Grand Rapids, MI, to start his own printing business. There, he and his wife, Nellie, raised their two sons, retiring to Tucson in 1956.

In his long and industrious lifetime, Mr. McClellan has well served our country and the communities he has called home. Raymond served in the U.S. Navy in World War I. In later years, he volunteered and helped organize a service at Sacred Heart Church in Tucson to take the sacraments to shut-ins. Raymond also volunteered to teach and call square dancing to winter visitors in his trailer park.

When I meet or learn of someone who has been graced with good health and lived to this age, I'm moved to reflect on the great advances and changes those 100 years have brought to this country. I think of the many historic events Mr. McClellan has witnessed and of which he was a part. During his life, Raymond has seen the admission of 11 new States, including Arizona, the inauguration of 18 Presidents, two World Wars, and many advances in our standard of living. Automobiles now dot our roads, and planes fill our skies. Even the Moon has the imprint of man's footsteps.

Certainly, everyday life has changed. Modern conveniences such as in-door plumbing, electricity, mass media, and telephones—unheard of 100 years ago—we now take for granted. Medically, we have seen such remarkable things as a cure for polio, the near doubling of life-expectancy and transplants of human organs. America has changed dramatically and Mr. McClellan has witnessed the changes first hand. He is a living history book.

In addition to recognizing Raymond McClellan, I would like to take a moment to thank the individual who brought this occasion to my attention. Ralph L. Levely is a citizen of Arizona who volunteers his time and service for a program that deserves our recognition. Ralph volunteers for Sacred Heart's Mobile Meals, a service that delivers meals to the elderly in Tucson. Through his work with this organization, Ralph became acquainted with Raymond McClellan, and thought to contact me on the occasion of his 100th birthday. Mobile Meals is an important facet of life to the individuals it serves. It is not just a service to provide meals. For many this is the only contact with the outside world, a friendly face who cares. The caring service Sacred Heart's Mobile Meals provides deserves not only our recognition, but our thanks.

I want to say thanks again to Ralph Levely for the much appreciated work he does and special congratulations to Mr. McClellan and his wife Nellie on this happy occasion. Best wishes for the second 100 years!

I would again like to wish this fine citizen a very happy 100th birthday.

THE 85TH BIRTHDAY OF THE CONGREGATION OF B'NAI ABRAHAM

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. KOLTER. Mr. Speaker, I am pleased to inform my colleagues that Congregation B'nai Abraham, Butler, PA's, only synagogue, is celebrating its 85th birthday with a grand reunion during the Fourth of July weekend.

During the 19th century, several Jewish families settled in Butler County, but it wasn't until 1903 that the Congregation B'nai Abraham was formed with 25 members, American born, as well as Hungarian, Lithuanian, and Romanian immigrants.

In 1911, the congregation dedicated its first synagogue on the west end of the city of Butler. As Butler County grew, so did its Jewish community, reaching 200 families in 1950. A new synagogue was built on the main street of Butler in 1956.

In addition to the support of their synagogue and the State of Israel, Butler County's Jewish residents continue to be integral part of the community of Butler. They provide participation, leadership, and generous financial support to a great many of the area's cultural, social welfare, political, economic, and educational institutions. They were fully involved both at home and at the front during both world wars with 72 young men in the Armed Forces in World War II making the supreme sacrifice.

Despite a decline in the Jewish population in Butler County, Butler's Jewish community remains active, serving Butler County with pride in its past and great hope for its future.

I commend the congregation of the B'nai Abraham for outstanding work on behalf of its members and all Butler Countians. I know my colleagues will join me in thanking the B'nai Abraham congregation for its selfless contributions to our great Nation. Happy 85th birthday.

OFF-BUDGET STATUS FOR THE U.S. POSTAL SERVICE

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. DYMALLY. Mr. Speaker, today the House will take a final vote on H.R. 4150—the Postal Reorganization Act of 1988.

Well over 300 Members have cosponsored this measure, and this vote will affirm their

support for removing the Postal Service from the Federal budget.

The Postal Service should never have been returned to the Federal budget. That decision by this administration was, obviously, the beginnning of its campaign to privatize the Postal Service.

Part of that effort was also evident in last year's budget summit where the administration required reductions in the Postal Service's operating and capital expenditures. These cuts were made on an agency budget which receives no operating cost appropriations from the Federal Government. These cuts also were imposed on an agency which usually operates without a deficit.

The administration claims the need to meet the deficit reduction targets of Gramm-Rudman. Make no mistake, it has nothing to do with the deficit, and everything to do with privatization.

Opponents of H.R. 4150 argue that maintaining the Postal Service on budget improves the accuracy of the deficit figures. Nonsense!

The Postal Service's mandate requires it to raise its own revenues to cover its costs. In fact, its accounting practices are significantly different from those used by the Federal Government. Including its revenues and expenses in the Federal budget distorts the deficit figures.

Whether the objective of the administration is privatization or deficit reduction, the net effect is the decline in the quality of the mail service. Our constituents have had to tolerate the necessary postal changes resulting from the budget reductions.

This Nation enjoys the least expensive, most effective, most efficient and most convenient mail service in the entire world. Adoption of H.R. 4150 assures the continuation of that record.

Deficiencies in the productivity of the Postal Service are indeed a concern. Those problems, however, are perhaps best resolved independent of the Federal budget process.

I commend Chairmen FORD and LELAND for the expeditious manner within which they considered this measure.

H.R. 4150 is more than a budget issue, it is a commitment to the future of the Postal Service, and I am very pleased to have been part of this commitment.

H.R. 2792—BILL TO AFFIRM AMERICAN INDIAN TREATY RIGHTS SHOULD BE PASSED SWIFTLY BY THE SENATE

HON. MIKE LOWRY

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LOWRY of Washington. Mr. Speaker, I am extremely pleased with yesterday's passage of H.R. 2792. This bill, when passed by the Senate and signed by the President, will affirm the treaty commitments made in the 1880's between the United States and tribal Indian nations. I would like to thank Chairmen UDALL, ROSTENKOWSKI, and RANGEL for their leadership in shepherding this bill through the House.

H.R. 2792, which I introduced on June 27, 1987, with bipartisan sponsorship, will clarify that income derived by American Indians from treaty-protected fishing activities is not subject to Federal taxation. This is not new law. It is merely an affirmation our Nation's moral and legal obligation to keep our word with regard to Indian treaty rights. The enactment of H.R. 2792 is required to end the Internal Revenue Service's effort to tax treaty-protected fishery resources.

One of the more shameful aspects of our Nation's heritage has been its disregard for Indian treaty rights and legal commitments made with American Indian tribes. This disregard and its destructive consequences, both for tribal Indian nations and American society as a whole, is well documented. There has been a head-in-the-sand tendency to view these wrongs as a part of our Nation's past. But unfortunately, ignorance and sometimes racism, continue to perpetuate this sad legacy.

The United States and Pacific Northwest Indian tribes negotiated treaties in the mid-1800's in which the tribes relinquished control over vast areas of land and reserved for themselves significant rights and resources. Because these Tribes traditionally relied on fishing for commerce and subsistence, it was logical that they specifically reserved the right to fish in their respective "usual and accustomed" waters. This clear, unequivocal language, and subsequent tribal fishing rights laws, have been upheld seven times in this century by the Supreme Court.

The Lummi Indian Tribe, a party to the Treaty of Point Elliott of 1855, manages its tribal commercial fishermen in the harvest of the tribes' treaty-protected fisheries resource. In 1982, the Internal Revenue Service cited 60 Lummi tribal fishermen for Federal income tax evasion and began to process these individuals through U.S. Tax Court. The Lummi Tribe, joined by two separate Interior Department Solicitor opinions—Colidiron 1983; Richardson, 1985—rightly contended that the IRS action expressly diminished the tribe's fishery treaty rights.

The Treasury Department Solicitor opinion—Kneightly 1983—held that tax exemption should have been included in the 1855 treaty even though the 16th amendment to the Constitution, which allowed a Federal income tax, was not ratified until 1913—58 years after the Point Elliott Treaty was signed. The Treasury Department's absurd position, which required remarkable prescience on the part of the tribes, was supported by the Justice Department over the Interior Department's decision as the "sounder view of the law" in December 1985.

Despite the Justice and Treasury Department positions, the administration has fully supported efforts to clarify treaty rights in this matter and has testified in support of H.R. 2792 during the hearing process. The Assistant Secretary of the Interior for Indian Affairs spoke in the bill's favor during markup in the House Interior Committee last year; the Treasury Department changed its position and gave qualified support of the bill in testimony before the House Ways and Means Committee earlier this year.

One of the most fundamental flaws in the IRS's aggressive action against tribal fishermen is that not once were the affected tribal governments afforded official consultations. The White House Indian policy of January 1983 spoke eloquently of the Reagan administration's plans to promote "government to government relations" with American Indian tribes. In this IRS-backed controversy, the reality proved to be quite different from the administration's 1893 policy pronouncement. Congressional vigilance is required to ensure that similar actions do not occur in the future.

The passage of H.R. 2792 by the full House is good news for American Indian tribes and our entire Nation. The bill confirms congressional intentions that treaty-protected tribal fishing rights are not subject to arbitrary Federal income taxes and that the United States does not intend to diminish treaties and agreements made with American Indian tribes.

In closing, I want to emphasize for the record that the tribal Federal income tax exemption is based on treaty rights, not any lesser action. I know that my colleagues in the House will join me in urging the Senate to act swiftly to pass H.R. 2792 so that the congressional position on this matter is absolutely clear.

SALUTE TO DOROTHA MOORE

HON. DENNY SMITH

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. DENNY SMITH. Mr. Speaker, I just wanted to take a moment to salute Dorotha Moore of Moro, OR—a grand lady of the grand old party.

This week, Dorotha is retiring after 32 years of service as Oregon's Republican National Committeewoman. In the 134-year history of the Republican Party, nobody has served on the National Committee longer than Dorotha Moore.

During her years of service, Dorotha has been a tireless advocate for a strong America and for equal rights. She has been a close friend of Presidents, of would-be Presidents, of Senators, of Governors, and of this Congressman.

Even though Dorotha has traveled in powerful circles, she has always returned to her wheat ranch in Moro. As a teacher and a neighbor, she was given much to her community.

Dorotha is the type of person who makes Oregon such a special place to live, work, and raise a family. I look forward to benefiting from her counsel and wisdom for many years to come.

H.R. 4143—GRAND RONDE RESERVATION ACT OF 1988

HON. LES AuCOIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. AuCOIN. Mr. Speaker, I rise in support of H.R. 4143, legislation to establish a 9,811-acre reservation for the Confederated Tribes of the Grand Ronde Community of Oregon.

The legislation is a compromise which reconciles several potentially conflicting goals. In particular, the terms and conditions of the bill will at once provide a stable economic base to enhance the tribe's drive to self-sufficiency while at the same time increasing economic opportunities for the entire community.

Rare is the bill which enables all interests involved to come out winners, but H.R. 4143 is one of those special instances.

While this particular bill represents the culmination of nearly 5 years of work on a plan to establish a reservation, I think it is important for the House to understand why this issue has arisen in the first place.

The simple reason is that the varied policies implemented by the Federal Government in its relations with Indian tribes over at least the last century have failed, with one of the biggest disasters being the drive in the 1950's to abolish several Indian tribes, including the Grand Ronde.

That termination policy was a striking irony for the Grand Ronde Tribe, which was essentially formed by the Federal Government a century before, through a fusion of several bands of Indians from the Oregon coast and the Willamette Valley.

From the Indian policies set more than 130 years ago through termination in the 1950's, the Federal Government has rarely acted in the long-term interest of the tribes and their members. This failure in no small part accounts for the socioeconomic situation in which Grand Ronde members now find themselves: a 1985 survey of tribal members concluded that Grand Ronde households, while larger than average in size, had lower median incomes, significantly higher rates of unemployment, and less formal education than their nontribal peers.

About a decade ago, Congress began to correct some of these policy mistakes by restoring Federal tribal status for tribes whose recognition was terminated in the 1950's. The Grand Ronde Tribe is among those tribes which had its recognition restored, through my legislation, Public Law 98-165.

Oregon's Siletz and Klamath Tribes have also had their Federal status restored, and a reservation for the Siletz Tribe was established by statute nearly a decade ago as well.

Establishing the Grand Ronde Reservation is the second step in putting the tribe and its members back on appropriate social, economic and cultural footing. The 1983 Restoration Act called for development of a reservation plan, which the tribe published in November 1985. It called for a reservation totaling 17,488 acres.

That plan generated substantial comment from the public, including business and community leaders in the area. Senator MARK HATFIELD and I spent considerable time analyzing the reservation plan proposed by the tribe and the public reaction to it.

Subsequently, Senator HATFIELD and I last July introduced two bills, one designating a 15,665-acre reservation, the other creating a reservation of roughly 5,100 acres.

Introducing these bills helped further refine the issues before us, and I organized a public meeting in Grand Ronde last August to air the controversies surrounding the reservation idea.

One of the biggest concerns I heard was whether the reservation would reduce the supply of timber available to local lumber mills. This concern arose because timber sold from Federal Indian reservations may be sold for export in unprocessed form.

At that time, the tribe proposed a 10-year restriction on the export of raw logs from its reservation, but this was felt by many to be insufficient..

Subsequently, I personally toured the Tillamook State Forest, which as most Oregonians know was largely destroyed in the infamous Tillamook Burn over 50 years ago. While that incredibly productive forest land was replanted after the fires, the timber there is not yet mature, and it will not be harvestable in substantial quantities for another 20 years.

In order to build a bridge to ensure stable log supplies to local mills, then, the tribe must restrict exports for 20 years from the day the reservation is created. That requirement is incorporated into a memorandum of understanding signed by the BIA and the tribe March 10, 1988, and given the full force of law in H.R. 4143.

A similar concern raised locally is whether creating the reservation would enable the tribe to build a sawmill in an already hotly competitive area. The timber from the reservation itself could not sustain a profitable mill, however, and the tribe has agreed, again for a 20-year period, not to bid for, purchase, cut or remove timber from the reservation itself or from adjacent public lands. This commitment is again spelled out in the March 10, 1988 memorandum and incorporated in section 5 of H.R. 4143.

A third concern raised during last summer's public meeting was over the creation through this reservation of hunting and fishing rights for the tribe. I believe that public meeting clarified this concern, and the legislation before the House adds an extra level of certainty on this issue.

Simply put, H.R. 4143 states that this reservation will not grant or restore any hunting, fishing, or trapping rights. The tribe's hunting, fishing, and trapping rights were settled once and for all by a judical consent decree issued January 12, 1987, and they arise irrespective of whether the tribe has a reservation.

A final concern raised during that public meeting was over public access to the reservation lands. Several points are important here. First, H.R. 4143 protects valid existing rights, such as reciprocal road rights of way, easements, and permits. Second, reservation closures are dictated by Bureau of Indian Affairs regulations, and the tribe must follow those rules.

In effect, tribal members and nontribal members are treated equally when access must be restricted, as is occasionally required due to fire threats and other unusual circumstances.

Several other matters merit the House's attention. First, the reservation acreage in H.R. 4143 is a middle ground between the tribe's proposal and the suggestions I received from some local residents. Many people told me they thought a reservation in the 10,000-acre range was appropriate, and the 9,811-acre area designated in H.R. 4143 is slightly below that suggestion. In addition, the designated area itself is almost entirely one contiguous block of land. The layout of the reservation is logical from a land management perspective, and eliminates many possible resource conflicts that could arise if scattered tracts were designated instead as reservation lands.

Second, the Bureau of Land Management has advised me on the most appropriate lands to change designation from public domain status to O&C grant land designation, in order to help block up the checkerboard pattern of BLM land in northwestern Oregon and to ensure an equal value redesignation of lands as the 9,811 O&C lands are designated as the Grand Ronde Reservation. This redesignation of 12,035 acres will result in no diminution of the value of land assets managed on behalf of the 18 western Oregon counties by BLM.

Finally, the Grand Ronde tribe has proposed a good-faith commitment to enhancing local economic opportunities by committing no less than 30 percent of its timber sale receipts to a special fund solely for expenditure on economic development projects.

To the best of my knowledge, this is without precedent—no other tribal government, and no local, State, or Federal governmental entity I know of has made a comparable up-front commitment of its resources to economic development. I believe this commitment, along with the other steps the tribe has taken to prevent weakening of the local economic foundation, are vital to making this reservation and the tribe a positive, integral part of the community.

Mr. Speaker, I believe both the tribe and the people from the local communities who played a construction role in shaping H.R. 4143 deserve a great deal of credit for developing this compromise package. The bill positively addresses the divergent needs and concerns of nearly all who will be touched by the reservation, making winners of the tribe and the local community.

A great deal of credit belongs to Mark Mercier, tribal chairman, who has guided the tribe and the development of this legislation intelligently and skillfully, and to Katherine Harrison, who for years has been a driving force behind the efforts of the tribe to revive its identity.

Many in the community, business people, civic activists, and the press, also deserve praise for their constructive work in making this plan a winner for all. And, of course, I want to thank my colleague in the Senate, Senator MARK HATFIELD, whose compassion and leadership have meant so much in the development of this and other bills.

VOTE "YES" ON THE POSTAL SERVICE REORGANIZATION ACT—H.R. 4150

HON. JAMES M. INHOFE

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. INHOFE. Mr. Speaker, today the House is scheduled to vote on H.R. 4150, a bill to take the U.S. Postal Service off budget. If signed into law this would mean that all Postal Service transactions would be removed from Presidential and congressional budgets. It also means Postal Service revenues would be left out of any calculations to determine the Federal deficit.

In 1970, the Postal Reorganization Act transformed the Postal Service into an independent corporation. At that time congressional intent mandated that the Postal Service operate in a businesslike manner on a breakeven basis. The Postmaster General reports that this was done, and over the last decade Postal Service income has exceeded expenses by 23 percent. In 1986 a determination was made that the budget would be better served if the Postal Service was on budget. The Reconciliation Act of 1987 went further and required the Postal Service to reduce expenses by $160 million. To date, the service operates almost entirely from self-financing, except for Federal funds needed for revenue forgone. For that reason, I believe the deficit and the congressional budget would be better served if the Postal Service were off budget.

I am aware that the President opposes this effort because he believes all areas of Federal spending must share in deficit reduction efforts. However, since the Postal Service contributes nothing to the Federal deficit, and takes little taxpayer money, I believe Congress should leave the operations of Postal Service alone by taking it off budget. Furthermore, the Postal Service has demonstrated the management tools to remain self-sufficient in the future. This legislation deserves our support and I urge the President to reconsider his opposition.

I urge my colleagues to support passage of the Postal Reorganization Act.

SALUTE TO RAYMOND TUMMINELLO OF WAYNE, NJ, WINNER OF THE ROTARY CLUB'S HARRIS AWARD

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. ROE. Mr. Speaker, it is with the greatest pride that I rise today to salute an outstanding constituent in my Eighth District of New Jersey who, for more than four decades, has given of himself to his community, State and Nation, and who has made us all the better for his efforts.

I am speaking of Raymond Tumminello, of Wayne, NJ, who will be honored for his great service on Wednesday, June 29, by the Wayne Rotary Club, which he has served with such distinction for these many years. On that day, for his many efforts, Raymond Tumminello will receive the Paul Harris Award, the highest honor a Rotarian can achieve. Considering the scope of community service that Rotary Clubs provide around the world, I am certain that you, Mr. Speaker, and our colleagues will agree that the honor being accorded Mr. Tumminello is one of the greatest magnitude.

Mr. Speaker, Raymond Tumminello was born and raised in Hawthorne, NJ, and attended Hawthorne public schools. He helped defend our Nation during World War II when he served for 3 years in the Navy. He came to Wayne, NJ, in 1958 and has lived there ever since. Currently, Raymond Tumminello serves as president of the Passaic County Board of Taxation, and was recently reappointed by Gov. Thomas Kean to a third term on the board.

But Raymond Tumminello's professional and community activities go far beyond his work on the board of taxation and demonstrate how great his contribution to his community has been. Mr. Tumminello is a former president of the Wayne Rotary, and served this outstanding organization as installation dinner chairman, as director and as cochairman of the Rotary's Ladies Night.

Mr. Speaker, Raymond Tumminello is also an active member of Our Lady of the Valley Church, where he has served on the Survey and Fund Raising Committees and continues to serve as an usher; of the Wayne Elks; the Knights of Columbus, and of Unico, of which he is a charter member and has served as president.

Professionally, Mr. Tumminello has been actively involved in business and governmental activities in Wayne. After coming to Wayne, he and his brothers opened T-Bowl Lanes on Hamburg Turnpike, where they introduced a wide variety of bowling leagues and competitions, thereby fostering great community spirit. Currently, he is coowner of DePetro-Tumminello Realtors of Great Notch, NJ.

Mr. Speaker, Raymond Tumminello has served the municipality of Wayne as a member of the board of adjustment, the planning board, the township council, council president, and as a mayoral candidate. He has also served the Wayne Republican Party as a member of the board of governors, president and leader.

When Raymond Tumminello is honored by the Wayne Rotary at its luncheon in Wayne on June 29, I know that his devoted wife, Mary; his son, Anthony; his daughter, Susan, his grandchildren will be especially proud of all he has achieved, as will the rest of his family and his many friends and colleagues.

Mr. Speaker, I appreciate the opportunity to present a brief profile of a man who has given of himself to his community, his State and our Nation, and who has immeasurably improved his world through his innumerable contributions—Raymond Tumminello, recipient of the Wayne Rotary's Paul Harris Award.

NINTH ANNUAL NATIONAL HISTORY DAY CONTEST

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. SKELTON. Mr. Speaker, I would like to call to the attention of this legislative body that this week the Ninth Annual National History Day Contest is being held at the University of Maryland. I think my colleagues know that the study of history holds a special place in my heart, as do the 57 students that are in Washington this week to represent the great State of Missouri.

These students exemplify the best of Missouri's young people interested in history. They range in age from 12 to 18 and will compete in four categories: historical papers, projects, performances, and media presentations. I know they will represent the State well.

I am sure my colleagues are familiar with the well-publicized statistics of history's declining role in our children's education. Contests, such as the one being held this week, directly attack these depressing figures. History is the backbone of all education. As the great English statesman and philosopher Sir Francis Bacon once said, "Histories make men wise; poets, witty; the mathematics, subtile; natural philosophy, deep; moral, grave; logic and rhetoric able to contend."

I know my colleagues will join with me in praising not only the students from Missouri, but all the young people from across the Nation competing at the contest this week.

PUERTO RICAN ARTIST ON EXHIBIT AT THE MET

HON. JAIME B. FUSTER

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. FUSTER. Mr. Speaker, the other day I noted in the RECORD a newspaper account of the world-class Casals Festival now underway in my home island of Puerto Rico. Now, I am pleased to bring to the attention of my colleagues another major cultural event that shows the growing appreciation of Puerto Rican culture in the United States.

It is the extraordinary exhibition at New York City's prestigious Metropolitan Museum of Art, and it features the work of the celebrated Puerto Rican painter, José Campeche. I had the pleasure of attending the June 14 opening in New York of the Campeche exhibition, and I was greatly impressed.

Truly, a thing of beauty is a joy forever, but it also gave me great joy to see the Met open its doors for a first-time, full-blown exhibition of a Puerto Rican painter. Just a couple of decades ago, when I was a student at nearby Columbia University, such an exhibit would have been unimaginable. This exhibit is a testimony to the growing appreciation of Puerto Rican culture in the United States.

The Metropolitan Museum of Art's Division of Education Services has planned a variety

of programs in conjunction with the exhibition, "José Campeche and His Time: Puerto Rico, 1751-1809," which is on display at the Museum from June 14 through September 25.

The programs will include bilingual lectures, films, gallery talks, a concert of chamber music and activities for families.

Obviously, then, this is a major exhibition put on by one of the world's major museums, and we in Puerto Rico are proud to be so recognized and honored. Moreover, Banco de Ponce, one of the leading banks in Puerto Rico, is to be particularly commended for helping to make this exhibition possible. I recommend this important exhibition to all of my colleagues.

PERSONAL EXPLANATION

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LELAND. Mr. Speaker, I was unavoidably absent on Tuesday, June 14, 1988, and Wednesday, June 15, 1988, because of official business in Laredo, TX.

Mr. Speaker, as an ardent supporter of the Veteran's Peace Convoy to Nicaragua—an organization carrying food, medicine, and clothing for the children of Nicaragua which was detained at the United States-Mexican border by United States Customs officials—I was asked by a broad coalition of groups in my district to travel to Laredo, TX, to offer my assistance in mediating a compromise of the controversy surrounding and deliverance of this humanitarian assistance.

As chairman of the Select Committee on Hunger, I have become well aware of the unfortunate circumstances surrounding the deliverance of humanitarian aid to the people of countries the U.S. Government disagrees with politically. I believe, however, that the Secretary of the Treasury should not interfere with the good faith efforts of the Veteran's Peace Convoy to deliver humanitarian assistance to the people of Nicaragua.

If I had been present on June 14 and 15, I would have cast my votes as follows:

"Nay" on the motion to adopt the Crane amendment to H.R. 4775, rollcall 181;

"Aye" on final passage of H.R. 4775, the Treasury, Postal Service, and General Government Appropriations Act 1989, rollcall 182;

"Yea" on the motion to approve the Journal, rollcall 183;

"Yea" on the motion to instruct conferees on H.R. 3051, the Airline Passenger Protection Act of 1987, rollcall 184;

"No" on Mr. DANNEMEYER'S amendment to H.R. 4783, the Departments of Labor, Health and Human Services and Education and Related Agencies Appropriations Act of 1989, rollcall 185;

"Yea" on final passage of H.R. 4783, rollcall 186;

"Nay" on Mr. SWINDALL'S amendment to H.R. 4782, the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act of 1989, rollcall 187; and

"Yea" on final passage of H.R. 4782, rollcall 188.

SANTA MARIA LAWN BOWLING CLUB'S 10TH ANNIVERSARY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LAGOMARSINO. Mr. Speaker, I rise to bring to the attention of my colleagues the 10th anniversary of the Santa Maria Lawn Bowling Club. The seeds of lawn bowling were planted in Santa Maria in 1972 when the local chapter of the American Association of Retired Persons appointed a committee, chaired by T.A. Stevenson, to establish a lawn bowling green in Santa Maria. The dream came true 6 years later by means of a grant from the Joslyn Foundation, a long-time supporter of lawn bowling organizations. The bowling green in Santa Maria was dedicated and the lawn bowling club founded on May 22, 1978. In September 1983 a clubhouse was added.

Since the founding of the Santa Maria Lawn Bowling Club, interest in lawn bowling in Santa Maria has grown considerably. Currently, the club boasts a membership of over 100, consisting of lawn bowlers both young and old. Membership and program activities include intraclub tournaments and visitations from five nearby bowling clubs. The Santa Maria Lawn Bowling Club has done much to promote the sport of lawn bowling and has involved many Santa Maria residents in this most enjoyable pastime.

Please join with me and the city of Santa Maria in wishing the Santa Maria Lawn Bowling Club a most memorable 10th anniversary and continued success in all future activities.

RETIREMENT OF CHICAGO POLICE OFFICER DUWAYNE R. HORNUNG

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LIPINSKI. Mr. Speaker, I rise today to bring to the attention of my colleagues an exemplary public servant, Officer Duwayne Hornung of the Chicago Police Department, on the occasion of his retirement from public service.

Officer Hornung moved to the Chicago area in his childhood and attended Chicago's Hyde Park and Harper High Schools. After graduation, he served in the U.S. Marine Corps from 1946 to 1951 during the Korean conflict. Following this valuable service to his Nation, he joined "Chicago's Finest" and has been a distinguished member of that force, receiving two complimentary letters, nine department commendations, and three honorable mentions. On August 1, 1988, Officer Hornung will be retiring from active duty after 30 years of dedicated public service.

I am sure my colleagues join me in thanking Officer Hornung for his many contributions to the community, congratulating him upon this milestone in his life, and sending best wishes for the future. Your service to the Nation, Officer Hornung, is greatly appreciated.

THE CHOICES IN CHILD CARE ACT

HON. DAN COATS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. COATS. Mr. Speaker, as the ranking Republican member of the Children, Youth and Families Committee I am proud to have coauthored the Choices in Child Care Act of 1988 (H.R. 4768), introduced on June 8 at a press conference attended by the House Republican leader, Mr. MICHEL.

As a member of the Child Care Task Force charged with drafting the bill I would like to share with you some of my thoughts on what the bill does and why.

H.R. 4768 recognizes the diverse needs of families and empowers parents to make choices about child care that are right for them. The bill provides for a refundable tax credit of up to $400 per child under the age of 6 for families with low and moderate incomes. Thus, regardless of the child care choices made, families of low and moderate incomes will be eligible for this refundable tax credit.

H.R. 4768 recognizes that the moral and spiritual upbringing of a child is the most important and personal decision made by parents. It also acknowledges the critical role that churches and synagogues have played in providing child care. Thus, our bill allows parents to use their vouchers at church-run centers and not be penalized in any way. I believe that this kind of flexibility in determining appropriate child care centers distinguishes America as a free nation and is a right that policymakers ought to respect.

The Choices in Child Care Act will provide for supplemental assistance to those low-income families who have child care expenses. This provision recognizes that with limited Federal resources, it is important to target resources to those families most in need.

The bill will strengthen the child care market by authorizing funds to States to address quality and availability issues at the local level. This provision will not drive up the cost of child care for all parents but will improve the quality and expand the supply of child care.

In addition to making funds available to States to increase supply, H.R. 4768 addresses this issue through tax incentives and by easing the burdens on family based child care providers.

In short, the Choices in Child Care Act does not create a new Federal child care infrastructure but puts most of the money directly into the hands of families. I believe that this approach is a sound one. It is responsive to families most in need of child care choices.

Finally, this bill does not discriminate against the one-earner family nor does it encourage one type of child care over another. What this bill does, is keeps child care decisions and policy in the hands of families, not Washington bureaucrats.

ACHIEVEMENT BY DICKSON COUNTY STUDENTS NOTED

HON. DON SUNDQUIST

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. SUNDQUIST. Mr. Speaker, earlier this month, an accomplished group of young people from Dickson County Elementary School in Dickson, TN, took part in a series of prestigious academic competitions, and I would like to take just a moment to call their achievement to the attention of this House.

Twenty-one students from Dickson County Elementary School took part in the world finals of Odyssey of the Mind, an international competition in creative problem solving. It has proven to be a worthwhile and challenging exercise in creative thinking for thousands of young people, and I am particularly proud that these students from my district were judged among the best.

In the category, "Showtime," Dickson County Elementary was represented in the world finals by Becky Rountree, Janet Leech, John Oliphant, Greg Gerdeman, Nicole Work, Britt Wiser, Laura Loggins, and coach Dana Ramsey.

In the category "Straddle Structure," the participants were Ned Collins, Robert Kimbro, Laura Wolfe, Shawn Evans, Jerry Work, Larry Underhill, Pat Noble, and coach Gala Rountree.

In the category "Gift of Flight," the participants were Andrea Spencer, Dennis DeBlock, Craig Lampley, Shay Stinson, Jill Rountree, Karen Bettler, Laura Hayes, and coach Barbara Bettler.

Mr. Speaker, I join the parents and families of these fine young people and their teachers at Dickson County Elementary School in commending their accomplishment and effort and love of learning. I hope this House will join me in continuing to encourage programs like Odyssey of the Mind, which challenge and inspire our brightest young people to think and create.

PRAISING SPEECH BY CHAIRMAN LES ASPIN ON THE IMPORTANCE OF THE UNITED STATES-ISRAEL STRATEGIC RELATIONSHIP

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. LEVINE of California. Mr. Speaker, during last month's annual policy conference of the American Israel Public Affairs Committee [AIPAC], my good friend and colleague, chairman LES ASPIN of Wisconsin, delivered what I considered to be one of the finest speeches I have ever heard on the importance of the United States-Israel strategic relationship.

Chairman ASPIN'S remarks trace the evolution of that relationship, beginning with Presidents Truman and Eisenhower and continuing through the Reagan administration. His primary thesis is that the strategic and political partnership between these two countries has gone from one of the heart alone to one "of the head and heart together."

In other words, what began as support based on emotion, affection, and sympathy for Israel has matured into a deep appreciation of Israel's strategic value of the United States and the West; occasional bilateral frictions should not obscure this fundamental fact. In just the past few years alone, for example: Israel has by law been declared a major non-NATO ally; prepositioning of U.S. military equipment in Israel has been authorized; and purchases of Israeli-made equipment have grown enormously.

As my distinguished colleague notes, these developments have occurred without jeopardizing America's relations with our Arab friends—contrary to the dire predictions of so many in the diplomatic and military communities.

In short, the United States-Israel relationship has developed many of the trappings of a full-fledged, formal military alliance—although we are not quite there yet. Thus, as the distinguished chairman suggests in his conclusion, it is imperative to continue qualitatively strengthening and deepening the United States-Israel strategic relationship.

Mr. Speaker, I ask that the full text of Chairman ASPIN'S remarks be placed in the RECORD at this point. They are definitive. They reflect the thoughts of one who is an outstanding friend of Israel and who is a leading defense thinker in this country. All of my colleagues will benefit from taking the time to read them carefully.

INTRODUCTION

A review of newspaper headlines would tell you that U.S.-Israeli relations soar and plummet to astounding heights and depths. The headlines, however, introduce a distortion. As the old newspaper adage explains, dog-bites-man does not a story make; what the media seeks is the man-bites-dog story.

The man bites-dog headlines we tend to live by show dramatic ups and downs.

Camp David: president and prime minister hug one another; all is wonderful.

Another time: Annexation of the Golan Heights: Washington irate; relations plummet.

These are dramatic swings. We rave at the closeness; then we rage at the frictions.

But foreign affairs operate at a level other than headlines. Most of our relations with foreign countries never make headlines.

And below the headline level, there has been an undramatic but steady and very important evolution in the U.S.-Israel strategic relationship. If I were to sum it up in bumper sticker terms, I would say that our relations were formerly of the heart alone, but are now of the head and heart together.

HISTORY OF THE RELATIONSHIP

Let me run through a little history of the evolution in our strategic relationship.

The first period—roughly covering the Truman, Eisenhower and Kennedy Administrations—was characterized in the United States by deep sympathy for Israel and a sense of moral responsibility.

There was great public support for Israel, an outpouring of emotion, affection, sympathy, and vocal support for little David facing the Arab Goliath. But official Washington emphasized evenhandedness. Official Washington did not wish to offend the Arabs and insisted on keeping considerable distance between the United States and Israel. Arms sales? No, we were happy to leave that to De Gaulle. The Navy made no port visits to Israel. Israel's leaders made no state visits to Washington. However, even from the beginning, there was a significant official relationship, though much of it was out of sight since it was based on a community of interest between the two intelligence services.

The Johnson Administration saw one major change. After the 1967 war, De Gaulle halted arms deliveries. The United States didn't want to get into the arms business—but it also wasn't about to abandon Israel. Military sales began.

As the 1970s opened, the heart of the strategic relationship was comprised of intelligence exchanges and arms sales.

In the Nixon-Ford period—or, should I say, the Kissinger period—there were notable developments. Washington demonstrated a real interest in the peace process and a willingness to devote time and energy to try to make it a reality. Because of that initiative, the White House dropped its restrictions on meeting Israeli leaders. Eisenhower and Kennedy never met with Ben Gurion. LBJ saw Eshkol, but only at the UN, not in Washington. During the Nixon-Ford years, those bars were dropped. Second, during this period Kissingerian realpolitik governed. Washington was prepared to use American arms to leverage Israel into line—supplying arms as a reward for desired conduct, and withholding them as punishment when Israel strayed from Kissinger's reservation.

So far as the Arabs were concerned, Kissinger sought to wean them from Moscow by showing the Russians couldn't deliver the goods. There were still not port visits or other such demonstrable evidences of close U.S.-Israel ties. Don't rub salt in Arab wounds remained the refrain.

Carter shifted from realpolitik to idealism. He disliked the use of arms sales as a lever against Israel and refused to play that kind of hard ball. He also authorized the first U.S. Navy ship visits to Israeli ports—the first as a salve after grumbles erupted over an acrimonious visit with Prime Minister Begin, and the second as a sign of approval for Camp David. And Carter did much more: He put the prestige of the presidency personally behind the peace process—a commitment without which the Israeli-Egyptian peace may never have materialized.

As the decade of the 1980s opened, we were seeing a progressive evolution in the U.S.-Israeli relationship—an incremental growth:

From the Eisenhower years, we had close intelligence ties;

Under Johnson, arms sales were added;

Under Nixon and Ford, regular visits with Israeli heads of government became a staple; and

Under Carter, the Navy began making port visits and the President himself made a commitment to the peace process, a unique commitment of the prestige of that office.

Then came Ronald Reagan with his own ideas. He said: "The paramount American interest in the Middle East is to prevent the region from falling under the domination of the Soviet Union." Israelis would have preferred to hear a statement with a little more about the centrality of Israel. The Kissingers and the Carters would have told Reagan that he was making a 1950's observation in the 1980s.

But never mind the twisted analysis. The result of Reagan's analysis was to strengthen the U.S.-Israeli relationship. One can fault him for doing it for the wrong reasons—that is, to shaft Moscow rather than to help Israel. But regardless of the motivations, the product was a dramatic one.

The State Department wasn't all that overjoyed. It still held the view that we had a commitment to Israel's survival and that was all that mattered for Israel. So why complicate relations with the Arabs by adding port visits and joint military exercises and the like. They also argued that talk of a strategic relationship was meaningless because Israel was too small to do anything for us in return.

Four key developments overruled the naysayers and brought about the changes of the 1980's.

First, Ronald Reagan did want closer ties and did not want to read memos that advised otherwise.

Second, the Iranian revolution and the Carter doctrine expanded the American role in the region and necessitated closer ties to the one stable, reliable, and militarily capable nation in the region.

Third, the terrorism threat was growing and Israel was one of the few countries with any idea of how to cope with it.

Fourth, closer ties—of both the head and the heart—were a natural byproduct of Camp David.

So, what have we seen in the 1980's? A lot. We've signed three formal agreements with Israel. The President has issued a National Security Decision Directive that establishes a Joint Political-Military Group. Port visits have developed apace. We now have joint military exercises. We have authorized the prepositioning of U.S. military equipment in Israel for use in an emergency. Israeli hospitals are prepared to accept American casualities—and all the details, pinpointing helicopter landing pads and the specific skills of individual hospitals, have been worked out. Israel has been declared under the law to be a major non-NATO ally of the United States. Purchases of Israeli-made equipment by the U.S. military have grown about 20-fold. A lot has happened to cement the relationship—to build a relationship of the head as well as the heart.

UNIQUENESS OF RELATIONSHIP COMPARED TO OTHER ALLIES

The obvious question is where does it all go from here. Over the years, Israel has become more and more of an ally, although there is not yet a formal alliance.

It is interesting to compare our ties to Israel with our ties to those countries with which we do have a formal alliance, like those of NATO. When we just focus on the U.S.-Israel relationship, we can be troubled by the strains and frictions. But our relations with our formal allies are certainly bedeviled by many strains and frictions.

First, trade. This is a decade of trade in which we have clashes of deep political and economic significance with most of our friends and allies—including Canada, Japan and Germany. But not one complains of harsh or restrictive Israeli trade policies for the simple reason that they don't exist. Israel, of course, has a small economy. But other small countries are causing us economic grief with a flood of cheap exports. Israel is not.

Second, burdensharing. We devote over 6 percent of our GNP to defense; our allies in NATO devote only half that proportion to defense, and Japan even less, while accepting our troops and our planes and our ships that provide for much of their defense. It is an inequitable division of the burden of allied defense. And it is an issue that irritates the American public, often enflaming public opinion. Israel does not seek our troops and spends about 25 percent of its GNP on its own defense. We have no friction over burdensharing with Israel.

Third, lack of support. By this I mean the unwillingness of many of our friends and allies to support American initiatives around the world, especially in the Third World. This is an interesting issue with regard to Israel. Israel cannot be criticized for giving inadequate support to American policies; it might, however, be faulted for giving too much support to some questionable American policies—for example, in selling arms to Iran.

Trade, burdensharing, and lack of support all strain our relations with America's traditional allies—but not with Israel. However, while we don't have those common frictions with Israel, we do have some frictions and conflicting interests. And it would be a mistake not to recognize them. They stem from one fact: Israel is a regional power with a dominant security concern in the region, while we are a global power with global interests.

These differences ought not—and really cannot—be papered over. The Middle East is Israel's backyard. This is where its survival is at stake. As an oil importer, we have some obvious interests in the Middle East. And, as a global power, we have interests in being able to deal as even-handedly as possible with as many governments as possible.

That is the heart of the debate over the U.S.-Israeli relationship; the critics allege that we have made commitments to Israel that conflict with our own national interests and that hobble our relations with the Arabs.

It would take mental contortions of considerable proportions to deny that our relationship with Israel complicates our relations with the Arab states and make it harder to achieve our goals there.

But let's not exaggerate this. For three decades, naysayers in the Washington bureaucracy said: We can't let our warships call at Israeli ports. The Arabs will go into orbit. We can't hold military exercises with the Israelis. The Arabs will have a fit. We won't gain much from the port visits and the exercises, while we stand to lose a lot. But now we schedule regular port visits. And we hold military exercises. And the Arabs who liked us before still like us. And the Arabs who hated us before still hate us.

The reason is simple. Most Arabs thought the United States had cemented close military ties with Israel in 1948; the port visits and joint exercises didn't sound like anything new to an Arab who thought the American and Israeli militaries were already virtually one and the same.

I think every objective observer would now have to admit an important lesson from this experience. We were simply too cautious and imagined Arab sensitivities that didn't exist. If we are going to have a workable policy in the Arab world, we must do better than that in understanding the Arab world.

Now, let me summarize our relations with Europe as compared to our relations with Israel. This is what it looks like:

Focusing on Europe, we do not have serious problems within the region because we have shared interests within the region. While we contend over nuance and degree, we are united on holding back the Soviet Union. But in the greater world, we are not united. The Europeans have other interests around the world—interests that often conflict with ours in Asia, Africa, the Middle East and Latin America.

Focusing on Israel, the picture is reversed. The positives become negatives and the negatives become positives. We have interests in the region that sometimes conflict with Israel's. But in the larger world, there is rarely a conflict. Israel sees its larger interests served if American interests elsewhere in the world are not undermined and American capabilities not drained away.

WHERE DO WE GO FROM HERE?

So, where do we go from here?

Clearly, I do not see much threat to our relationship—to the underlying, long-term relationship. I do see glitches galore. The West Bank settlements. Arms sales to the Persian Gulf states. The Golan annexation. But these are glitches. They cause pain and give one or the other—or both of us—some stomach distress. But they don't alter the basic framework of enduring interests.

Some say that the next step in our relationship is a full-fledged formal alliance. Most recognize, however, that this won't come about until there is a comprehensive peace settlement.

Caution needs to be followed here. An alliance could make Israel more like a traditional ally. If we had a defense treaty with all its accoutrements, would our relationship be bedeviled by hassles over burdensharing? Would Israel no longer feel a need to support U.S. interests in the farflung corners of the world? Or, given the Taiwan experience, would Israel suffer doubts about a guarantee that it doesn't now want or need to rely on? It's an interesting possibility worth thinking about.

Nevertheless, the fact is: a genuine peace supported by real security guarantees remains the premier goal—the shared goal—of Israel and the United States. It is only important to recognize that an alliance is not the answer to—and will not end—all our problems.

So where might we go from here? I see both quantitative and qualitative improvements ahead.

First, there are some quantitative changes. I foresee more port visits, more prepositioning of American military equipment in Israel, more foreign aid freed for Israel to spend as it feels best, more integrated military planning, and more sales of Israeli-made equipment to the U.S. armed forces.

The last point presents a real challenge. Israel is selling superbly designed equipment to the United States right now. But more could be sold. I see, however, the heavy hand of the Pentagon bureaucracy interfering. There's a term in the Pentagon—NIH, for Not Invented Here. The bureaucracy is resistant to buyng Israeli weapons because they are NIH. We have to cut that Gordian knot. Then you will see a real surge—a real quantitative increase—in Israeli sales to the U.S. military.

I can also see some qualitative improvements in the relationship. There is one in particular that I think can be important. As I mentioned earlier, for five years we have had a Joint Political-Military Planning Group. It's purpose is to discuss and flesh out the U.S.-Israeli strategic relationship. Its existence is, in fact, a concrete expression of those close ties. But we can do better.

Two years ago, I pressed legislation under which Israel was officially designated a major non-NATO ally. That is also a concrete expression of our close ties. But we can do more.

We should upgrade our links. Let us not just meet on the level of the Joint Political-Military Group. Let's reach higher. The Minister of Defense of Israel and the Secretary of Defense of the United States should meet—formally and officially—at least once every two years—preferably every year—to coordinate and consolidate our ties. The United States has long had a commitment of the heart to serve as the defense of last resort for Israel's existence. Such regular contacts by the heads of each nation's military establishment would telegraph the commitment to friend and foe alike. This would be a significant, qualitative improvement in the U.S.-Israel strategic relationship.

CONCLUSION

Israel holds a unique position in the firmament of our foreign relations. In some ways, that uniqueness is awesome, to adopt the word of the decade. In other ways, that uniqueness generates unique problems that require unique management to devise unique solutions. But that isn't bad—especially from Israel's standpoint. the uniqueness requires us to devote particular attention to Israel. At least she never has to worry—as do scores of Latin American and African countries—that we will just lump her together with all the other countries of the region.

There's a final point to be made. There are people in this country worried about a closer U.S.-Israel alliance because of what's currently happening on the West Bank or some such point of friction. But differences such as those exist in any alliance. After all, look at what's happening with our other allies, in NATO and the Far East, for example.

One ally told us we couldn't overfly its territory to reach Libya. Another ally, whose capital city residents are unhappy at the noise made by our F-16s, is making us close our base there. Still others do not wish to cooperate with us in the Persian Gulf, even while we help assure their fuel supplies. And others are saying our ships can't visit unless we say they carry no nuclear weapons.

Those are all vexing problems that cause a great deal of perspiration to flow in the corridors of the State Department and the Pentagon. Yet, no one I know in the U.S. government is suggesting that we bury the NATO alliance.

To be sure, we have some workaday frictions with Israel. But we shouldn't hold the Israeli-American alliance to a higher standard than our other alliances.

THE REAGAN FOREIGN POLICY

HON. NICK JOE RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 21, 1988

Mr. RAHALL. Mr. Speaker, from time to time it has been my practice to insert into the CONGRESSIONAL RECORD articles I run across which I feel would be of interest to my colleagues as well as the American public. I was reading through the 1988 Harvard International Law Journal and came across this article by Dr. Stuart S. Malawer which I feel gives us an early and insightful look at the impact and legacy of the Reagan foreign policy and its effect on international law. It is an interesting and thoughtful piece and bears the reading of my colleagues. I would like to insert it into the RECORD at this point.

[From the Harvard International Law Journal]

REAGAN'S LAW AND FOREIGN POLICY, 1981-1987: THE "REAGAN COROLLARY" OF INTERNATIONAL LAW

(Stuart S. Malawer, Professor of Law, George Mason University, J.D., Ph.D., Dipl.)

I. INTRODUCTION

The unilateralism of the Reagan Administration's foreign policy has influenced its treatment of international law. Just as it has rejected international cooperation in many instances in favor of unilateral pursuit of perceived national interests,[1] the Reagan Administration has also attempted to mold international law to accommodate those interests.[2] I would call this challenge to the international legal system the "Reagan Corollary" of international law.

The Reagan Corollary is not merely a careless disregard for international law. On the contrary, it is an attempt to pressure the international legal system into changing in a manner beneficial to United States interests. In order to realize such change, the Reagan Administration has proffered new rules of international law, relied on previous versions of existing rules, and reinterpreted existing rules and treaties by applying them in unprecedented contexts.[3] The common threads connecting these practices are the assertion of unilateral state action and a broad right of self-defense, less reliance on international institutions such as the United Nations, and an emphasis on a state's right to pursue its national interests.

The Reagan Corollary supplements the "Reagan Doctrine" in foreign affairs.[4] The Reagan Doctrine stesses reliance on military action as a prominent instrument of foreign policy. In particular, it calls for assistance to insurgencies opposing Marxist governments.[5] The Reagan Doctrine is an example of the kind of state action that the Reagan Corollary aims to justify under international law.[6]

Both the Reagan Doctrine and the Reagan Corollary are symptomatic of disillusionment with the dreams of collective security and great power cooperation of the period following World War II.[7] While Americans have always hoped for a world ruled by reason and law,[8] the perceived irrelevance of the postwar international institutions and rules makes that ideal appear remote.[9]

This article does not attempt to present a comprehensive analysis of the foreign policy events of the Reagan era. Neither is it intended as a treatise on the sources of international law or as a detailed analysis of the legality of each of the foreign policy incidents discussed below.[10] Rather, it is meant to provide an overview of the foreign policy of the Reagan Administration and its relation to international law. This survey of important foreign policy decisions, in conjunction with the governing rules of international law, should illustrate the Reagan Corollary in practice, help identify the United States challenge to international law, and aid in assessing the foreign policy of the Reagan Administration.

II. METHODOLOGY

I have selected the thirty-two foreign policy decisions analyzed below as among the most significant of the last seven years in terms of their impact on the international legal system. In many instances they relate to the international legal system as a restraint on state action, where the issues involved are a state's use of force or the regulation of state behavior implicating important national interests. I have not included routine policy decisions unless they deviate significantly from accepted rules of norms.[11]

Each decision is grouped into a category reflecting its relationship to accepted rules or norms of international law. While the precise rules of international law are open to interpretation in most instance, I have measured the decisions against what I consider to be the prevailing standards of international law.

The first category, "Compliance," includes the foreign policy decisions of the Reagan Administration that follow generally accepted rules of international law or conform to the expectations of the international community. Under the traditional standards, there is no doubt that the action in question is permissible.

In the second category, "Modification," fall the foreign policy actions that the Reagan Administration has justified by "bending" the traditional rule of international law or applying that rule in an unprecedented context.[12]

The third category, "Significant Deviation," includes foreign policy actions that are in clear violation of the generally accepted rules or expectations of the international community.

The thirty-two decisions, numbered according to their place in the chronological survey that follows, are grouped by category in the table below.

I. Compliance:

1. Recogntion of Iranian Hostage Agreements.

19. Criticism of Soviet Human Rights Violations.

25. Arms Sales to Iran.

28, "Franchising" and "Privatization."

31. Failure to Enter Into Negotiations for Further Restrictions on Nuclear Tests.

II. Modification:

2. Gulf of Sidra I: Downing of Libyan Planes.

4. Polish Trade Sanctions.

5. Trans-Siberian Pipeline Sanctions.

6. Deployment of Marines in Beirut.

9. Buildup of United States Forces in Honduras.

10. Military Support of El Salvador.

16. Trade Embargo Against Nicaragua.

17. Interception of Egyptian Airliner and Capture of *Achille Lauro* Pirates.

20. Conditioning Foreign Aid on United Nations Voting Record.

21. Nonobservance of SALT II.

22. South African Trade Sanctions.

24. Trade Sanctions Against Libya, Syria, and Iran.

26. Changing leaders in Haiti and the Philippines.

27. Support of Angolan and Afghan Insurgents.

30. Rejection of 1977 Geneva Protocol I.

III. Significant Deviation:

3. Rejection of the Law of the Sea Treaty.

7. Invasion of Grenada.

8. Policy Towards Nicaragua.

11. Withdrawal from UNESCO.

12. Nonpayment of United States Obligations to the United Nations.
13. Withdrawal from the International Court of Justice in the Nicaragua Case.
14. Withdrawal from the Compulsory Jurisdiction of the International Court of Justice.
15. Restricting Nicaraguan Sugar Imports.
18. ABM Treaty Reinterpretation and the Strategic Defense Initiative.
23. Gulf of Sidra II: Bombing of Libya.
29. Indictment of a Foreign Diplomat.
32. Reflagging Kuwaiti Tankers.

This survey refers to a broad conception of international law. The traditional definition of international law encompasses customary law as evidenced by state practice.[13] In this light, expectations of the international community are relevant because they reflect developing customary laws. Thus the unilateralism of the Reagan Administration's foreign policy manifests itself not only in attempts to redefine and modify traditional rules, but also in the defiance of expectations of international cooperation.

III. SURVEY OF FOREIGN POLICY DECISIONS

1. Recognition of Iranian Hostage Agreements (Compliance)

The Reagan Administration resisted an opportunity to mold international law by demonstrating good faith observance of the Iranian hostage agreements.[14]

In 1981, the Carter Administration concluded executive agreements with the government of Iran to secure the release of fifty-two Americans held hostage in that country for 444 days.[15] The traditional rule of international law requires the good faith observance of such agreements.[16] The Reagan Administration accordingly issued various executive orders and regulations implementing the accords.[17]

The Reagan Administration failed, however, to invoke the "state duress exception" to the traditional rule.[18] According to emerging customary international law, agreements concluded by the threat or use of force are voidable.[19] The Iranian government's involvement in the 1979 seizure of the United States Embassy and its personnel arguably constituted state duress.

2. Gulf of Sidra I: Downing of Libyan Planes (Modification)

The United States Navy's downing of two Libyan planes in the Gulf of Sidra in 1981 was unusual, though not a violation of international law.

Libya had claimed the Gulf of Sidra as territorial waters and warned the United States not to conduct naval maneuvers there.[20] When the United States disregarded the warning, two Libyan jets challenged two United States F14s. The F14s responded by shooting down both Libyan planes.

The actions of the United States did not violate international law. Neither conventional nor customary law of the sea supports the Libyan claim of the Gulf of Sidra as territorial waters.[21] International law therefore permitted the United States planes to defend themselves while exercising their rights of overflight over international waters.[22] The Reagan Administration's decision to use force, especially in the context of its political campaign against Libya's alleged support of international terrorism, was nevertheless very unusual.

3. Rejection of the Law of the Sea Treaty (Significant Deviation)

The Reagan Administration also defied the expectations of the international community by rejecting the Law of the Sea Treaty.[23]

The Law of the Sea Treaty was drafted under the auspices of the United Nations and was near completion when President Reagan came into office.[24] The general expectation in the United States and abroad was that the United States would join the growing international consensus in favor of the Treaty if accommodation could be reached on key issues.[25] However, the Reagan Administration strongly objected to the provisions of the Treaty concerning international regulation of deep seabed mining.[26] The Reagan Administration's refusal to sign the Law of the Sea Treaty was a significant deviation from expectations of multilateral cooperation in favor of unilateral state action.

4. Polish Trade Sanctions (Modification)

Trade sanctions against Poland tested the limits of acceptable intervention in the internal affairs of other states.

The Reagan Administration imposed sanctions in 1982 to protest the Polish government's violation of the human rights of its nationals.[27] Although customary international law prohibits intervention in the domestic affairs of other states,[28] a state's violation of the human rights of its own population has become a justifiable subject of concern of other states.[29] The use of unilateral trade sanctions to manifest that concern is therefore acceptable but highly unusual.[30]

5. Trans-Siberian Pipeline Sanctions (Modification)

Export controls on products sold by United States firms and their foreign subsidiaries to Eastern bloc countries posed problems of interference in the internal affairs of United States allies in Western Europe.

The Reagan Administration imposed the controls[31] ostensibly in response to alleged Soviet pressure on the Polish government to suppress internal dissent.[32] Its underlying policy concern, however, was its fear of potential Soviet blackmail if the NATO allies became dependent on Soviet exports of oil and natural gas.[33]

Trade sanctions imposed through domestic corporations or their foreign subsidiaries are not an unusual form of interference in the internal affairs of other states.[34] If such export controls are unreasonable, however, they violate international law as an interference with the principal interests of the country where the foreign subsidiary is located.[35] In the view of NATO allies, the extraterritorial application of these controls constituted interference with their national sovereignty.[36] Such extraterritorial application of United States law is also objectionable to much of the international community.[37]

65. Deployment of Marines in Beirut (Modification)

The Reagan Administration's deployment of United States marines in Beirut was a controversial use of national forces as peacekeepers in other countries. The marines were deployed as a part of a multilateral force formed in 1982 by France, Italy, and the United States to keep peace in Beirut in the wake of the 1981 Israeli invasion of Lebanon.[38]

Other countries have deployed peacekeeping forces, although primarily under the auspices of the United Nations.[39] Whether such forces are unilateral or authorized by the United Nations, they are permitted under international law only with the consent of the host state.[40]

The deployment of United States marines in Beirut raises two issues. First, while the Lebanese government made a formal request for the peacekeeping force,[41] many Lebanese considered the government illegitimate. It was engaged in a civil war at the time and did not militarily control most of its territory. The validity of Lebanon's consent to the presence of the marines is therefore subject to attack. Second, the deployment set a precedent for the use of national forces in a non-United Nations peacekeeping context.

7. Invasion of Grenada (Significant Deviation)

The invasion of Grenada was a far-reaching deviation from the traditional rules governing the use of force in international relations.

United States Marines invaded the Caribbean nation of Grenada in October 1983. The Reagan Administration's justification of the invasion relied on a formal request by the Organization of Eastern Caribbean States (OECS).[42]

Conflicting rules of international law applied to this situation. On the one hand, the principles of nonintervention and restraint on the use of force in international relations, embodied in article 2(4) of the United Nations Charter, prohibit such an action. On the other hand, there is a right of collective self-defense when authorized by a regional organization and a right to use force when requested by a legitimate government.[43]

The dubious validity of the request for United States intervention,[44] however, justifies claims that the Reagan Administration was in effect asserting the right to use military force to overthrow Marxist governments when the opportunity arises. The Grenada invasion was thus a revealing illustration of the Reagan Doctrine, which sanctions the use of force in support of democratic revolutions.

8. Policy Towards Nicaragua (Significant Deviation)

The Reagan Administration's policy towards Nicaragua represents a significant deviation from even the broadest notions of self-defense.

The Reagan Administration helped organize and support the *contras*, an insurgency aimed at overthrowing the Sandinista government.[45] it also ordered the mining of Nicaraguan harbors.[46] There is thus considerable reason to believe that the Reagan Administration's goal is the overthrow of the Nicaraguan government.

While there is a broad right of self-defense under Article 51 of the United Nations Charter, it is not applicable here.[47] Article 51 permits collective self-defense only if a state is being attacked by armed or irregular forces. Nicaragua does not threaten an armed attack on the United States. Nor does the alleged Marxist nature of its government justify the organization and support of an insurgency intended to overthrow it. Furthermore, the mining of harbors is traditionally considered an act of war.[48]

The Reagan Administration's policy towards Nicaragua is the cornerstone of the Reagan Doctrine. It is the most egregious example of the Reagan Administration's disdain for existing international law, evidenced by reliance on new rules with little precedent.

9. Buildup of United States Forces in Honduras (Modification)

The Reagan Administration has increased the number of United States forces in Honduras to train and conduct joint exercises with the Honduran army.[49] in reinforcing United States forces in Honduras, the Reagan Administration has abided by the letter, if not the spirit, of international law.

International law provides that a state may comply with a host state's request for the stationing of troops.[50] In this case, Honduras clearly gave its consent.[51] The underlying purpose of the buildup, however, is to exert pressure on Nicaragua, Honduras' neighbor. Such pressure is a violation of the international legal principle of restraint on the use of force.[52]

United States policy in Honduras is a good example of the Reagan Administration's strategy of molding a traditional rule of international law to conform to its perception of national interests.

10. Military Support of El Salvador (Modification)

The Reagan Administration has sent military training forces to El Salvador to assist the Salvadoran army in combatting domestic insurgents, which are apparently receiving some external support.[53] Such assistance extends the notion of collective security to a novel context.

The applicable rule of international law in this situation is unclear. A state is permitted to exercise its right of collective security by stationing troops in other countries when requested to do so.[54] Yet the rule governing the stationing of troops in countries engaged in civil war is unsettled.[55] Possible external subversion would, however, justify such support.[56] But the external aggression here is nevertheless not the classic type of cross-border movement of troops. The Reagan Administration is therefore extending the traditional rule to a novel situation.

11. Withdrawal from UNESCO (Significant Deviation)

The United States withdrew from the United Nations Educational, Scientific and Cultural Organization (UNESCO) to create pressure for a reformulation of its policies and programs.[57] While the applicable treaty provisions permitted the withdrawal,[58] it was contrary to the long-standing United States policy of cooperation with the specialized United Nations organizations. Withdrawal also violated the international community's expectations of meaningful United States participation in multilateral organizations. This practice further illustrates the Reagan Administration's penchant for unilateral action concerning international organizations and its dependence on narrow interpretations of national interests to justify an otherwise lawful action.

12. Nonpayment of United States Obligations to the United Nations (Significant Deviation)

The Reagan Administration's policy on payment of United States budget obligations to the United Nations has deviated significantly from international rules and expectations.

Since 1985 the Reagan Administration has refused to pay various items of the United Nations budget which have been assessed to the United States. It has taken this position because it believes that the United Nations is not sufficiently responsive to the interests and concerns of the United States.[59]

The Reagan Administration's policy of nonpayment does not conform to international rules which mandate that member states fulfill their financial obligations to the United Nations when such obligations become due.[60]

13. Withdrawal from the International Court of Justice in the Nicaragua Case (Significant Deviation)

In 1984, the government of Nicaragua sued the United States in the International Court of Justice (ICJ) for the illegal use of force, charging the United States with recruiting, training, arming, financing, and directing military actions in and against Nicaragua.[61] The Reagan Administration claimed that the ICJ had no jurisdiction in matters concerning events in Central America.[62] It then withdrew the case from the ICJ's compulsory jurisdiction.[63]

The Reagan Administration's withdrawal violated both the compulsory jurisdiction provision of the Statute of the ICJ (article 36(2)) and the United States' optional declaration of adherence to that provision.[64] Pursuant to this latter declaration, the United States was required to give six months notice to the ICJ if it wished to withdraw from compulsory jurisdiction. It never gave the requisite notice.

In addition, the Reagan Administration's policy deviated significantly from that of most prior United States administrations, which promoted the development of the ICJ and advocated adherence to international law, especially international adjudication and arbitration.[65]

14. Withdrawal from the Compulsory Jurisdiction of the International Court of Justice (Significant Deviation)

In 1985, following its boycott of the case brought by Nicaragua, the Reagan Administration withdrew completely from the compulsory jurisdiction of the ICJ.[66]

Although article 36(2) of the Statute of the ICJ and the United States' optional declaration[67] both permit the United States to unilaterally restrict its future adherence to compulsory jurisdiction, the Reagan Administration's actions were inconsistent with traditional United States support for the ICJ and could serve as a precedent for similar steps by other states.[68]

15. Restricting Nicaraguan Sugar Imports (Significant Deviation)

In 1983, the Reagan Administration restricted imports of sugar from Nicaragua.[69] It claimed that such restrictions were legal under United States tariff legislation and international law.[70]

However, the General Agreement on Tariffs and Trade (GATT)[71] generally precludes such quota restrictions.[72] The Administration's actions violated United States obligations under this international agreement.

16. Trade Embargo Against Nicaragua (Modification)

In 1984, following the restriction on sugar imports from Nicaragua, the Reagan Administration imposed a more general trade embargo on that country.[73] It claimed that the embargo was justified by the United States' right of self-defense in its continuing conflict with Nicaragua.[74]

Article XXI of the GATT permits the imposition of such measures as trade embargos when a state must protect its essential security interests.[75] Furthermore, the United States and the international community have witnessed numerous precedents of the imposition of trade embargos and sanctions. By broadly construing the security interests at stake, the Reagan Administration was able to claim that its action was in conformity with international norms.

17. Interception of Egyptian Airliner and Capture of Achille Lauro Pirates (Modification)

In 1985, the Reagan Administration ordered United States military and intelligence forces to intercept an Egyptian airliner which was carrying terrorists who had previously hijacked the Italian passenger ship *Achille Lauro.*[76]

Although there is a universally recognized right to capture pirates,[77] there is no recognized right or precedent for intercepting civilian aircraft in order to capture pirates.[78] The interception was therefore an unprecedented action which violated existing international norms concerning freedom of aviation.

18. ABM Treaty Reinterpretation and the Strategic Defense Initiative (Significant Deviation)

Since 1985 the Reagan Administration has reinterpreted key provisions of the 1972 ABM Treaty[79] to allow development and testing of elements of the Strategic Defense Initiative (SDI).[80] The Administration's position has been in clear violation of the rules of treaty interpretation.

According to international law, one method of interpreting a treaty's provisions is by the subsequent practice of its parties.[81] In this case, both the Soviet Union and the United States acted until 1985 as if the ABM Treaty proscribed the development and testing of antiballistic missile systems. Such past behavior restricts new interpretations of the Treaty's provisions.[82]

At this point, development and testing are still in the early stages. The United States will be in violation of the ABM Treaty, however, once it commences significant development and testing. The Reagan Administration's reliance on an interpretation which directly conflicts with prior practice marks a very serious deviation from the accepted international rules of treaty interpretation.

19. Criticism of Soviet Human Rights Violations (Compliance)

The Reagan Administration has continuously criticized the Soviet Union for violating the human rights of Soviet dissidents and minorities.

Although there is a general principle of international law which mandates noninterference in the internal affairs of other states,[83] the treatment of minorities is now generally recognized as a matter of international concern when such treatment involves human rights.[84] The position of the Reagan Administration on this matter thus does not deviate from the international norm.

20. Conditioning Foreign Aid on United Nations Voting Record (Modification)

In 1984, the Reagan Administration supported legislation which permits the conditioning of foreign aid on a state's voting record in the United Nations.[85]

Although there is no general rule of international law which requires the United States to grant foreign aid,[86] there is an expectation that foreign aid will be granted regardless of a state's United Nations voting record.[87] The Administration's action was therefore a significant development in international law.

21. Nonobservance of SALT II (Modification)

In 1986, the Reagan Administration discontinued the United States' observance of the SALT II Treaty.[88] Since the Senate never ratified the SALT II Treaty, it was

not legally binding on the United States. However, because the United States observed the agreement for a number of years,[89] the discontinuance represents a change in United States policy. Although the Reagan Administration did not violate international law, it did transgress world expectations.

22. South African Trade Sanctions (Modification)

In 1985-86, Congress forced the Reagan Administration to impose economic and trade sanctions on South Africa.[90] Although it is true that sanctions against South Africa have substantial precedent within the international community[91] and that traditional international law permits economic sanctions,[92] the imposition of sanctions on a state for the purpose of changing its internal policies is nevertheless international behavior of questionable legality.[93]

23. Gulf of Sidra II: Bombing of Libya (Significant Deviation)

The Reagan Administration ordered the bombing of the Libyan capital as retaliation for Libya's terrorist activities against the United States and other Western countries.[94] Customary international law does not condone the use of force for purposes of retaliation or deterrence.[95] It permits the use of force only in self-defense and perhaps, under some circumstances, in preemptive or anticipatory self-defense.[96] But the strikes against Libya were for purely retaliatory purposes. No matter what justifications the Reagan Administration gave for its action or how effective it has been in counteracting Libyan-supported terrorism, the bombing was clearly a deviation from the accepted international rules concerning the use of force by one state against another.

Perhaps the bombing will lead to the development of a special set of international rules applicable to the use of force against terrorist states. At this point, however, such actions violate existing rules of international law.

24. Trade Sanctions Against Libya, Syria, and Iran (Modification)

The Reagan Administration has ordered the imposition of trade sanctions against Libya, Syria, and, most recently, Iran for their support of international terrorism.[97] Traditional international law does not prohibit the use of economic and trade sanctions against hostile states.[98] Since World War II, the United States has frequently used economic sanctions as a foreign policy weapon against such countries as North Korea, Cuba, South Yemen, and the Soviet Union.[99] However, the use of such sanctions in response to international terrorism amounts to a new application of existing rules.

25. Arms Sales to Iran (Compliance)

As the Iran-Contra Hearings made clear, the Reagan Administration secretly supplied arms to Iran for use in Iran's war against Iraq.[100] The traditional law of neutrality forbids a neutral state from supplying any belligerents with arms or war materiel in time of war or open hostilities.[101] However, many countries, including the United States, have repeatedly supplied arms to belligerents in the past.[102] Although the secret arms sales to a hostile state like Iran may have violated the domestic law of the United States and were a significant deviation from the traditional law of neutrality, they were not inconsistent with the current expectations and practice of the international community.[103]

26. Changing Leaders in Haiti and the Philippines (Modification)

In 1986, the Reagan Administration assisted in the transfer of power from the Marcos dictatorship in the Philippines and the Duvalier dictatorship in Haiti.[104]

International law prohibits the interference by one state in the internal affairs of another.[105] Such interference includes assisting forces, whether democratic or antidemocratic, seeking to depose an existing government. However, there is no rule prohibiting a state from responding to requests by beleaguered leaders to arrange their exit to other countries, thus assisting in a peaceful transfer of power. There is also no rule prohibiting a state from using other peaceful means, such as declaring support for opposition leaders, to facilitate such a transfer.

While the United States thus technically adhered to the applicable international rules, the approach it took to facilitating the formation of new governments in the Philippines and Haiti was a novel twist.[106] It thus avoided the traditional prohibition against interference and established an important precedent.

27. Support of Angolan and Afghan Insurgents (Modification)

The Reagan Administration has provided covert military aid to insurgents who oppose Soviet-backed regimes in both Angola and Afghanistan (and, to a lesser extent, in Mozambique).[107]

The general rule of customary international law prohibits a foreign state from intervening in an insurgency against an existing government.[108] The support the United States has given to the insurgents in these countries is therefore a significant deviation from the accepted rules of international law. But since the support is limited in its form and scope, it cannot be said to be a blatant deviation.

28. "Franchising" and "Privatization" (Compliance)

The Reagan Administration, as the Iran-Contra Hearings indicated, has made significant use of other countries ("franchising") and private parties ("privatization") to further its foreign policy objectives.[109] There is no rule of international law prohibiting a state from using either a third state or a private party to conduct its own diplomacy. In fact, these are traditional modes of state action which conform to the expectations of the international community. Thus, despite possible violations of domestic laws, the Reagan Administration has complied with the traditional rules of international law and diplomacy.

29. Indictment of a Foreign Diplomat (Significant Deviation)

The Reagan Administration has sought the indictment of a foreign diplomat in the United States for violations of United States criminal law.[110] It contends that the indictment will allow the United States to prosecute the diplomat if he ever returns to the United States in a nondiplomatic capacity.[111]

The international law of diplomatic immunity, as contained in the Vienna Convention on Diplomatic Relations[112] and implementing federal legislation,[113] absolutely prohibits all criminal actions against an accredited diplomat.[114] The Reagan Administration's action is a significant deviation from the law of diplomatic immunity as understood by all countries. While some in the Administration justify it as an act of deterrence against future violations of United States law, it is still grossly inconsistent with accepted international norms and the practice of all other states.

30. Rejection of 1977 Geneva Protocol I (Modification)

The proposed Protocol I to the 1949 Geneva Conventions would give combatant status to insurgents and terrorists.[115] The Protocol has won wide international support and the virtually unanimous expectation was that the United States would ratify it.[116] However, as an expression of its proclaimed antiterrorist policies, the Reagan Administration refused to ratify Protocol I because of the provisions concerning the treatment of irregular forces as combatants.[117]

Failure to ratify a multinational agreement is obviously not a breach of international law, although there was a substantial expectation that this particular agreement would be adopted by all major countries.

31. Failure to Enter Into Negotiations for Further Restrictions on Nuclear Tests (Compliance)

The Reagan Administration has refused to enter into negotiations over further restrictions on future nuclear tests.[118] There is some minimal obligation to do so under the Non-Proliferation Treaty.[119] However, the obligation under the Treaty is, at the most, to continue negotiations with other nuclear powers.[120]

The United States is not unilaterally responsible for failing to enter into negotiations. Thus, the United States has not breached its legal obligations under the Non-Proliferation Treaty.

32. "Reflagging" Kuwaiti Tankers (Significant Deviation)

The Reagan Administration "reflagged" Kuwaiti oil tankers in order to protect perceived vital interests of the United States and its allies in the Persian Gulf and to pressure Iran to negotiate an end to the Iran-Iraq war.[121] Laws governing neutral merchant vessels require they not supply war goods or assist a belligerent state or the active allies of a belligerent.[122] Kuwait is an active de facto ally of Iraq. It provides Iraq with a port for off-loading military supplies, serves as a transit area for such goods, and furnishes needed capital. The protection of Kuwaiti ships by the United States in these circumstances violates the laws of maritime neutrality.[123]

In addition, the 1958 Geneva Convention on the High Sea requires the existence of a "genuine link" between a state and a ship before a state may extend its flag to a merchant vessel.[124] There is no genuine link here. The Kuwaiti ships are not owned by United States entities and have been reflagged merely as a convenience to secure United States naval protection., Thus, this policy is a significant deviation from the traditionally accepted rules of international law.

IV. CONCLUSION

These thirty-two incidents illustrate the implementation and breadth of the Reagan Corollary of international law. They demonstrate that the Reagan Administration has attempted to refashion the international legal system to loosen the restrictions that international law and international institutions place on unilateral state action.

The Reagan Administration has avoided the restrictions of international legal rules in three ways: by "bending" traditional rules or applying them to unprecedented situations; by reinterpreting treaty obliga-

tions; and, occasionally, by advocating new rules of international law.

If the thirty-two incidents examined above are indicative, the Reagan Administration's favored approach is to "bend" international legal norms to suit United States interests by applying them in an unprecedented manner. The imposition of economic sanctions against Poland, South Africa, Libya, Syria, and Iran established an important precedent for a practice whose legality was once questionable. The Reagan Administration's actions in the Gulf of Sidra, Lebanon, Honduras, El Salvador, Angola, Afghanistan, and during the *Achille Lauro* incident were similarly intended to test the limits on the internationally acceptable use of force.

The Reagan Adminstration has also attempted to avoid international legal strictures by reinterpreting treaty commitments. It has interpreted the ABM Treaty to allow development of SDI; it has minimized its obligation under the Nuclear Non-Proliferation Treaty to negotiate a nuclear test ban with the Soviet Union; and it has read the GATT to permit restrictions on Nicaraguan sugar imports and a trade embargo against Nicaragua for reasons of national security.

In a few instances the Reagan Administration has openly defied existing rules of international law and offered in their place new norms of international behavior. It has sought to indict an accredited foreign diplomat in disregard of the Vienna Convention on Diplomatic Relations. It has also established a pattern of using force, directly and by proxy, in clear violation of existing international law. It has implicitly asserted a right to use force to deter Libyan terrorism, to overthrow a Marxist government in Grenada, and to exercise a broad notion of self-defense against Nicaragua.

The Reagan Administration has demonstrated its irritation at the restraints imposed by international institutions by refusing to sign the United Nations Law of the Sea Convention, withdrawing from UNESCO, failing to fulfill its financial obligations to the United Nations, and withdrawing its acceptance of the compulsory jurisdiction of the International Court of Justice. Some of these actions were patently illegal, while others represented a more nebulous violation of expectations of multilateral cooperation.

Because of formulation of international law and the vitality of international institutions depend so much on state practice, the Reagan Corollary is likely to have a significant impact on the international legal system. Viewed in the most favorable light, the Reagan Corollary has the potential for encouraging adherence to international norms by allowing individual states to impose costs on other states for noncompliance. In this sense it could be seen as a surrogate for the weak enforcement mechanism of the international legal system. In the long term, however, the Reagan Corollary creates a risk of anarchy because the new rules that it seeks to create would authorize all states to apply and enforce their particular interpretations of international norms. Although intended to modify or replace existing rules, the Reagan Corollary does not represent a viable alternative to the current legal order because it would work best, if at all, if the new rules applied only to the United States.

The legacy of Reagan Administration's foreign policy is one of excessive unilateralism with little regard for international law or the future development of the international legal system. This legacy is contrary to traditional United States support for international law and multilateral cooperation. It remains for the next administration to revert to foreign policies more reflective of traditional United States global interests, policies which support the development of an efficient and effective pluralistic international legal system.

FOOTNOTES

[1]*See* Fitzgerald, *The American Millenium*, in ESTRANGEMENT: AMERICA AND THE WORLD 264, 275-76 (S. Ungar ed. 1985); Hamilton, *Power Without Purpose*, 65 FOREIGN POL'Y 29, 30 (Winter 1986/87). *See generally* Greenwald, *Foreign Policy Under Reagan II*, 63 FOREIGN AFF. 219 (1984) Discussing Reagan's second term); *America and the World 1984*, 63 FOREIGN AFF. 411 (1985) (discussing Reagan's first term).

This policy appears to be within the Morgenthau-Kennan school of foreign policy realism. *See generally* Kennan, *Morality and Foreign Affairs*, 64 FOREIGN AFF. 205, 205-06 (1985).

[2]Many have criticized the Reagan Administration's approach to foreign relations and international law. *See, e.g.*, D. MOYNIHAN, LOYALTIES 66-67, 93-96 (1984); A. SCHLESINGER, THE CYCLES OF AMERICAN HISTORY 83-85 (1986); Henkin, *International Law and National Interest*, 25 COLUM. J. TRANSNAT'L L. 1. 2-3 (1986); Moynihan, *Remarks of Daniel Patrick Moynihan*, in RESTORING BIPARTISANSHIP IN FOREIGN AFFAIRS 31, 34-39 (S. Soper ed. 1985); Tolchin, *As Laws are Flouted, Congress Seethes*, N.Y. Times, Nov. 13, 1985, at A24, col. 3; Oakes, *Reagan's Brezhnev Doctrine*, NY. Times May 20, 1985, at A19, col. 1. For a discussion of domestic illegality, see Henkin, *Foreign Affairs and the Constitution*, 66 FOREIGN AFF. 284 (1987).

However, few legal scholars have written on the effect of the Reagan Administration's foreign policy on international law. The scholarly debate has instead focused on the impact of international law of U.S. foreign policy. *See, e.g.*, Comment, *Does the U.S. Government Think That International Law Is Important?* 11 YALE J. INT'L L. 479, 488 (1986) Hamilton, *supra* note 1, at 30; Matheson, *The Role of Reagan Administration*, 9 GEORGE MASON U.L. REV. 21 (1886).

[3]*See infra* notes 41-124 and accompanying text.

[4]*See generally* Layne, *The Real Conservative Agenda*, 61 FOREIGN POL'Y 73, 83-93 (Winter 1985/86).

[5]Unlike the Nixon Doctrine, which called for the use of United States materiel and training in support of friendly Third World governments, the Reagan Doctrine advocates using such support and training to overthrow unfriendly governments. George Will describes the Reagan Doctrine as "Containment Plus." *See* Wash. Post, Dec. 12, 1985, at A19, col. 6.

[6]*See* Tucker, *Exemplar or Crusader?* 5 NAT'L INTEREST 64, 67 (1986) ("[The Reagan Doctrine] declares that intervention may be justified in order to overturn governments that are illegitimate. In the new formulation, only legitimate governments have the right to demand non-intervention from others.").

[7]*See* Fontaine, *Beyond Wilson and Rambo*, 65 FOREIGN POL'Y 33, 37-38 (Winter 1986/87); *see also* A. EBAN, THE NEW DIPLOMACY: INTERNATIONAL AFFAIRS IN THE MODERN AGE 4, 268-69, 397-98 (1983).

[8]*See generally* D. ACHESON, PRESENT AT THE CREATION: MY YEARS IN THE STATE DEPARTMENT (1969).

[9]*See Death of A Pipe Dream*, Wall St. J., Oct. 8, 1985, at 30, col. 1.

Dissatisfaction with the postwar international legal system may be the result of changes within the U.S. foreign plicy elite. *See generally* I. DESTLER, L. GELB & A. LAKE, OUR OWN WORST ENEMY: THE UNMAKING OF AMERICAN FOREIGN POLICY (1984). While the old elite was generally pragmatic and nonideological and prized consensus, the new elite is identified with the "populist tradition," favors unilateral action, and disparages existing international law. *See* W. ISAACSON & E. THOMAS, THE WISE MEN: SIX FRIENDS AND THE WORLD THEY MADE 29, 726 (1986).

The Reagan Corollary could nevertheless be viewed as an attempt to uphold in a more realistic fashion the objectives of the United Nations and the Western Alliance, interpreted as being the fundamental rights and freedom of states and individuals. This would, however, be a generous assumption. *But see* J. KIRKPATRICK, THE REAGAN DOCTRINE AND U.S. FOREIGN POLICY 13 (1985). Rep. Jack Kemp (R-N.Y.) defends the Reagan Doctrine as consistent with nonpartisan idealism. *See* N.Y. Times, Dec. 27, 1985, at A30, col. 4.

[10]Nor does this article provide a comparison of the foreign policy of the Reagan Administration as it affects international law with that of the Carter Administration or prior U.S. administrations. Many claim that the Carter Administration was more concerned with the constraints of traditional rules of international law. *See, e.g.*, Comment, *Supra* note 2, at 480. *But see* D. MOYNIHAN, LOYALTIES 66, 67 (1984) ("Neither the Carter Administration then nor the Reagan Administration now display a sense of the past American commitment to the role, if not the rule, of law in world affairs.").

[11]Additional foreign policy decisions that affected the international legal system could also be considered. They include the Reagan Administration's support for the Genocide Convention; support of Great Britain is the Falklands crisis; NATO deployment of cruise missiles in Europe; support of the resistance movement in Mozambique; the response to the Soviet downing of KAL 007; the forced return of Cuban refugees to Cuba; terrorism policy; the implementation of the Gulf of Maine Boundary decision; trade sanctions against Iran and Iraq; the closing of the Palestine Information Office in Washington, D.C.; the capture of a highjacking suspect at sea; and the destruction of an Iranian oil platform in the Persian Gulf.

Additional actions that demonstrate the Reagan Administration's irritation with international institutions include the dissenting vote cast by the U.S. in 1981 against the adoption by the World Health Organization of an ethics code concerning the promotion of baby formula; the antiabortion policy announced at a UN conference in Mexico City in 1984; the boycott of the 1987 UN conference on disarmament and development in New York; and the decision to send low-ranking officials to the 1987 Trade and Development Conference of the UN Commission for Trade and Development. *See generally Boycotting Guns and Butter*, N.Y. Times, Sept. 3, 1987, at A26, col. 1.

[12]Abraham D. Sofaer, Legal Adviser to the State Department, has said that there are legitimate arguments in favor of "bending" the rules of international law in extraordinary circumstances. He has acknowledged that the Reagan Administration has considered antiterrorist proposals that would violate existing international law. *U.S. Is Said to Weigh Abducting Terrorists Abroad for Trials Here*, N.Y. Times, Jan. 19, 1986, at 1, col. 4.

[13]Statute of the International Court of Justice, art. 38, para. 1(b), 59 Stat. 1055, T.S. No. 993, 1 U.N.T.S. xvi.

[14]*See Text of Administration's Statement on Review of Hostage Accords*, N.Y. Times, Feb. 19, 1981, at A10, col. 3.

[15]*See generally* Malawer, *Rewarding Terrorism: The U.S.-Iranian Hostage Accords*, 6 INT'L SECURITY REV. 447 (1982).

[16]Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 26, U.N. Doc. A/Conf. 39/27 (1969), *reprinted in* 8 I.L.M. 679, 690 (1969).

[17]*See generally* Malawer, *supra* note 15.

[18]*See* Malawer, *A Gross Violation of Treaty Law*, 3 Nat'l Law J., Mar. 2, 1981, at 13, col. 1. *See generally* Malawer, *supra* note 15.

[19]*See* Vienna Convention on the Law of Treaties, *supra* note 16, art. 52; RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §3319(d) note 2 (Tent. Draft No. 6, 1985) (citing Malawer's review of the background regarding the state coercion rule as a basis for invalidating treaties); Malawer, *Imposed Treaties and International Law*, 7 CAL. W. INT'L L.J. 5 (1977); Malawer, *New Concept of Consent and World Public Order: "Coerced Treaties" and the Convention on the Law of Treaties*, 4 VAND. J. TRANSNAT'L L. 1 (1970).

[20]*See generally Before Plane Battle, Libya Assailed U.S. Over Its Maneuvers*, N.Y. Times, Aug. 20, 1981, at A16, col. 1; *U.S. Reports Shooting Down 2 Libya Jets That Attacked F14s Over Mediterranean*, N.Y. Times, Aug. 20, 1981, at A16, col. 6.

[21]*See generally* RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §511(a) comments f and h (Tent. Draft No. 6, 1985) (citing the 1958 Convention on the Territorial Sea and the Contiguous Zone); Current Development, *The Gulf of Sidra Incident*, 80 AM. J. INT'L L. 668 (1986).

[22]*See* United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, art. 83(1)(b), U.N. Doc. A/Conf. 62/125, *reprinted in* 21 I.L.M. 1261, 1287 (1982). For U.S. policy regarding the right of overflight, see United States Ocean Policy, 19 WEEKLY COMP. PRES. Doc. 383 (Mar. 10, 1983), *reprinted in* 22 I.L.M. 464 (1983).

[23]United Nations Convention on the Law of the Sea, *supra* note 22.

[24]*See generally* Recent Development, *Convention on the Law of the Sea*, 23 HARV. INT'L L.J. 455 (1983).

[25]*See* Richardson, *Power, Mobility and the Law of the Sea*, 58 Foreign Aff. 902, 919, (1980).

[26]*The World in Summary: Holding Course on Law of the Sea*, N.Y. Times, Dec. 12, 1982, §4, at 2, col. 2. A number of industrialized states, including the U.S., the U.K. the Federal Republic of Germany, and Japan, subsequently adhered to a separate agreement on deep seabed mining. Provisional Undertanding Regarding Deep Seabed Matters, Sept. 2, 1984, *reprinted in* 23. I.L.M. 1354 (1984).

[27]*Transcript of Reagan's Talk*, N.Y. Times, Oct. 10, 1982, §1, at 16, col. 1.

[28]Although not stated explicitly in the UN Charter, this is a generally recognized rule of international law. *See generally Declaration and the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, G.A. Res. 2131, 20 U.N. GAOR Supp. (No. 14) at 11, U.N. Doc. A/6014 (1965). Nonintervention is closely linked to the principle of the sovereign equality of states, contained in art. 2(1) of the UN Charter. *See* Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 196 (Merits Judgment of June 27).

[29]The concept of universal human rights, a rejection of the motion that a state may treat its citizens as it wishes, has developed into a fundamental principle of international law since World War II. *See generally* HUMAN RIGHTS IN INTERNATIONAL LAW (T. Meron ed. 1984). More controversial is the motion of humanitarian intervention, by which states claim the right to use force to prevent human rights violations or anarchy in other states.

[30]The UN has authorized trade sanctions against Rhodesia and South Africa for human rights violations. Trade sanctions outside the UN framework are more controversial.

[31]Controls on Exports of Petroleum Transmission and Refining Equipment to the U.S.S.R., 47 Fed. Reg. 141-45 (1982) (codified at 15 C.F.R. §§379, 399), *reprinted in* 21 I.L.M. 855 (1982); Amendment of Oil and Gas Controls to the U.S.S.R., 47 Fed. Reg. 27,250-52 (1982) (codified at 15 C.F.R. §§376, 379, 385), *reprinted in* 21 I.L.M. 864 (1982).

[32]*See* Controls on Exports of Petroleum Transmission and Refining Equipment to the U.S.S.R., *supra* note 31, at 141; Amendment of Oil and Gas Controls to the U.S.S.R., *supra* note 31, at 27,250.

[33]*See generally* Zaucha, *The Soviet Pipeline Sanctions: The Extraterritorial Application of U.S. Export Controls*, 15 LAW & POL. IN INT'L BUS. 1169 (1983).

[34]*See generally* G. HUFBAUER & J. SCHOTT, ECONOMIC SANCTIONS RECONSIDERED ch. 1 (1985).

[35]RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§403, 414 (Tent. Draft No. 2, 1981); *see also* A. LOWENFELD, TRADE CONTROLS FOR PPOLITICAL ENDS ch. 3 (2d ed. 1983).

[36]*European Communities; Comments on the U.S. Regulations Concerning Trade with the U.S.S.R., reprinted in* 21 I.L.M. 891 (1982).

[37]The export controls are not unlike the restraints on trade caused by extraterritoral application of United States antitrust laws. *Cf.* Pettit & Styles, *The International Response to the Extraterritorial Application of United States Antitrust Laws*, 37 Bus. Law. 697 (1982).

The Dutch courts have rejected compliance with U.S. export controls as a defense to a breach of contract claim. *See. e.g., Compagnie Europeene des Petroles, S.A. v. Sensor Nederland B.V., reprinted in* 22 I.L.M. 66 (1982).

[38]*See* BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE CURRENT POLICY No. 415, LEBANON; PLAN FOR THE PLO EVACUATION FROM WEST BERBUT 6-12 (1982).

[39]UN peacekeeping forces have been deployed, for example, in Korea, the Congo, the Sinai, Cyprus, and Lebanon. *See generally* D. BOWETT, UNITED NATIONS FORCES (1961); R. HIGGINS, UNITED NATIONS PEACEKEEPING; DOCUMENTS AND COMMENTARY (1981).

[40]*See generally*, Malawer, *The Withdrawal of UNEF: A New Nation of Consent*, 4 CORNELL INT'L. J. 25 (1970) (concerning peacekeeping forces under the auspices of the General Assembly and Chapter VI of the UN Charter).

[41]*See* Lebanese Note Requesting U.S. Contribution to MNF, Aug. 18, 1982, *reprined in* 21 I.L.M. 1196 (1982).

[42]*See* OECS Statement, 83 DEP'T ST. BULL, 67, 68 (1983) (statement of Oct 25, 1983). The U.S. also cited as justification for its intervention a request from the Governor-General of Grenada and its reponsibility for the safety of U.S. nationals in Grenada. Levitin, *The Law of Force and the Force of Law*, 27 HARV. INT'L L.J. 621 645 (1986).

[43]*See generally* Schachter, *The Right of States to Use Armed Force*, 82 MICH L. REV. 1620, 1644-45 (1984).

[44]*See* Joyner, *Reflections on the Lawfulness of Invasion*, 78 AM J. INT'L L. 131, 135-36 (1984).

[45]*See* Military and Parmilitary Activities In and Against Nicaragua (Nicar v. U.S.) 1984 I.C.J. 169 (Interim Protection Order of May 10), 1984 I.C.J. 392 (Jurisdiction and Admissibility Judgment of Nov. 26), 1986 I.C.J. 1 (Merits Judgment of June 27). *See generally* Almond, *The Military Activities Case; New Perspectives on the International Court of Justice and Global Public Order*, 21 IN. . LAW. 195 (1987).

[46]*See* Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.) 1986 I.C.J. 1, 22 (Merits Judgment of June 27).

[47]*See generally* Malawer, *Anticipatory Self-Defense; Article 51 of the United Nations Charter and the Middle East War of 1967*, 8 INT'L PROBS. 14 (1970).

[48]*See, e.g., Definition of Aggression*, G.A. Res. 3314, art. 3(c), 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631 (1974).

[49]*See U.S. Guardsmen Building Road in Honduras*, N.Y. Times, Dec. 20, 1987, at A21, col. 1.

[50]*See* G.A. Res. 3314, *supra* note 48.

[51]*See U.S. Guardsmen Building Road in Honduras*, N.Y. Times, Dec. 20, 1987, at A21, col. 4.

[52]*See* U.N. CHARTER art. 2, para. 4.

[53]*See U.S. Embassy in El Salvador says Forces are Within Limits*, N.Y. Times, Feb. 20, 1986, at A3, col. 4; *see also* L. COCKBURN, OUT OF CONTROL 10 (1987).

[54]*See generally* Schachter, *supra* note 43.

[55]There has been extensive debate concerning U.S. involvement in the Vietnam War. *See, e.g.*, Falk, *International Law and the United States' Role in the Vietnam War*, 75 YALE L.J. 1122, 1122-28 (1966).

[56]*Id.*

[57]*Text of Statement by U.S. on its Withdrawal from UNESCO*, N.Y. Times, Dec. 20, 1984, at A10, col. 3.

[58]Constitution of the United Nations Educational, Scientific and Cultural Organization, Nov. 16, 1945, art. 2(6), 61 Stat. 2495, 3 Bevans 1311, 4 U.N.T.S. 275.

[59]*See For U.N. at 40, a Mixed Message from Reagan*, N.Y. Times, Sept. 17, 1985, at A1, col. 1.

Ironically, the Soviet Union, a longtime critic of the UN, has reversed its historic position and is now paying its prior assessments to the world body and suggesting that the UN's authority be increased. Keller, *Russians Urging U.N. be Given Greater Powers*, N.Y. Times, Oct. 18, 1987, §1, at 1, col. 5; Goshko, *Soviet Pledge to Pay U.N. Debt Pressures U.S. to Settle Up or Forfeit Influence*, Wash. Post, Nov. 14, 1987, at A8, col. 1.

[60]U.N. CHARTER art. 17.

[61]Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1984 I.C.J. 169 (Interim Protection Order of May 10), 1984 I.C.J. 392 (Jurisdiction and Admissibility Judgment of Nov. 26), 1986 I.C.J. 1 (Merits Judgment of June 27). *See generally* Recent Development, *International Court of Justice—Case Concerning Military and Paramilitary Activities in and against Micaragua*, 28 HARV. INT'L L.J. 146 (1987).

[62]Statement on the U.S. Withdrawal from the Proceedings Initiated by Nicaragua in the International Court of Justice, *reprinted in* 24 I.L.M. 246 (1985).

[63]United States Letter of April 6, 1984 to the UN Secretary General, *reprinted in* 24 I.L.M. 670 (1984).

[64]*See* Statute of the International Court of Justice, *supra* note 13, art. 36(2); Declaration Recognizing as Compulsory the Jurisdiction of the International Court of Justice, *deposi* Aug. 26, 1946, T.I.A.S. No. 1598, 1 U.N.T.S. 9 [hereinafter Declaration].

[65]The United States had most recently resorted to the ICJ during the Iranian hostage crisis, under President Jimmy Carter. *See* United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1979 I.C.J. 7 (Provisional Measures of Dec. 15), 1980 I.C.J. 43 (Judgment of May 24).

[66]*U.S. Limits Its Role at Court in Hague*, N.Y. Times, Oct. 8, 1985, at A5, col. 1; *see also* Department of State Letter and Statement Concerning Termination of Acceptance of I.C.J. Compulsory Jurisdiction, *reprinted in* 24 I.L.M. 1742 (1985). *See generally* Recent Development, *International Court of Justice—United States Termination of its Declaration Accepting Compulsory Jurisdiction of the I.C.J.*, 27 HARV. INT'L L.J. 725 (1986).

[67]Declaration, *supra* note 64.

[68]*See* Leigh, *Jurisdiction—U.S.-Nicaragua FCN Treaty—Art. 36 of the ICJ Statute—Nature and Effect of Reservations*, 79 AM. J. INT'L L. 442, 446 (1985).

[69]Malawer, *Trade Law: Import Quotas and Foreign Policy with National Security*, Daily Record (Baltimore), Apr. 20, 1983, at 4, col. 1.

[70]The Administration's position on the sugar embargo was one of the few supported by the ICJ in its judgment on the case brought by Nicaragua. The ICJ held, in part, that the economic measures taken by the U.S. against Nicaragua did not violate international principles of nonintervention. *See* Rowles, *Nicaragua Versus the United States: Issues of Law and Policy*, 20 INT'L LAW. 1245, 1276 (1986) (contending that the ICJ judgment on economic measures, while of minor import to the Nicaragua case, was very important as a statement of present customary law of nonintervention).

[71]General Agreement of Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT].

[72]*Id.*, art. XI. Art. XXI(b)(iii) of the GATT does provide that such restrictions are not precluded if they are implemented for the protection of a nation's essential security interests in time of an international relations emergency. However, it is highly questionable whether such an emergency existed in this case.

[73]Exec. Order No. 12,513 (1985), *reprinted in* 24 I.L.M. 809 (1985). *See generally Embargo on Nicaragua Appears of Little Effect*, N.Y. Times, Nov. 10, 1985, §1, at 16, col. 1.

[74]*See* Message to the Congress on U.S. Actions, 21 WEEKLY COMP. PRES. Doc. 566 (May 6, 1985), *reprinted in* 24 I.L.M. 809-10 (1985).

[75]GATT, *supra* note 71, art. XXI.

[76]*See generally Documents Concerning the Achille Lauro Affair and Cooperation in Combating International Terrorism*, 24 I.L.M. 1509, 1512-24, 1554-57 (1985).

[77]RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §404 (Tent. Draft No. 2, 1981).

[78]Although international agreements provide for general jurisdiction in air hijacking cases, they do not provide for the interception of commercial airliners in order to capture criminals for prior acts of piracy. *See id.*, note 1. *See generally* Paust, *Extradition and the Prosecution of the Achille Lauro Hostage-Takers: Navigating the Hazards*, 20 VAND. J. TRANSNAT'L L. 235 (1987).

[79]Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, United States-USSR, 23 U.S.T. 3435, T.I.A.S. No. 7503.

[80]*Arms Debate Now Centers on AMB Pact*, N.Y. Times, Feb. 17, 1987, at 1, col. 1. *See generally United States: Statements on ABM Interpretation*, 26 I.L.M. 282-312 (1987) (various documents).

[81]Vienna Convention on the Law of Treaties, *supra* note 16, art. 31, paras. 1-3.

[82]The Senate Foreign Relations Committee has reviewed prior U.S. and Soviet practice and concluded that the past behavior of both parties contradicts the Administration's current interpretation. *Foreign Relations Panel Denounces Reinterpreting of ABM Treaty*, Wash. Post, Sept. 21, 1987, at A10, col. 1.

[83]*See supra* note 28.

[84]*See supra* note 29.

[85]*See generally* Kasten, *Friends Owe Us Their Vote*, N.Y. Times, May 23, 1986, at A31, col. 1.

[86]However, a number of General Assembly resolutions have declared a new international economic order, in which developed states would have an obligation to aid poorer nations. *See, e.g., Declaration on the Establishment of a New International Economic Order*, G.A. Res. 3201, 14 U.N. GAOR (Supp. VI) (1974), *reprinted in* 13 I.L.M. 715 (1974); *Charter of Economic Rights and Duties of States, G.A. Res. 3281, 15 U.N. GAOR (1974), reprinted in* 14 I.L.M. 251 (1975).

[87]*Declaration on the Establishment of a New International Economic Order, supra* note 86, art. 4(k) (proclaiming as a principle of the new order "active assistance to developing countries by the whole international community, free of any political or military conditions")

[88]*See Breaking with SALT II; Critics Should Present their Case,* Los Angeles Daily Journal, Dec. 3, 1986, at 4, col. 1.

[89]*See id.; see also Future of Strategic Arms Control in the Wake of SALT II,* PROC. AM. SOC'Y INT'L L. 212, 213-14 (1980) (remarks of Paul Warnke). The Reagan Administration continued to observe the SALT II Treaty despite its belief that the Soviets were violating it.

[90]*Sanctions Veto Takes a Trouncing in Both Houses,* N.Y. Times, Oct. 5, 1986, §4, at 1, col. 1. *See generally* Recent Development, *Economic Sanctions—United States Sanctions Against South Africa,* 27 HARV. INT'L L.J. 235 (1986).

[91]The Security Council has authorized an arms embargo on South Africa. S.C. Res. 181, U.N. Doc. S/5386 (1963); S.C. Res. 282, U.N. Doc. S/9867 (1970). The General Assembly has passed many resolutions concerning the embargo. *See, e.g.,* G.A. Res. 33/183 B, U.N. Doc. A/33/L.19 & Ann. 1 (1979). For a statement by the Canadian government on its participation in the arms embargo, see Statement by the Secretary of State for External Affairs, July 6, 1985, *reprinted in* 24 I.L.M. 1464 (1985).

[92]*See* Farer, *Political and Economic Coercion in Contemporary International Law,* 79 AM. J. INT'L L. 405, 410 (1985).

[93]Interference in the domestic affairs of another state is generally prohibited under international law. *See supra* note 28. Trade sanctions in particular are prohibited when imposed with the aim of destroying or changing the government of another state. *See* Farer, *supra* note 92, at 413.

[94]*See Plots on Global Scale Charged,* N.Y. Times, Apr. 15, 1986, §1, at 1, col. 6.

[95]The UN Charter provides only for "the inherent right of individual or collective self-defense if an armed attack occurs," U.N. CHARTER art. 51, para. 1. It does not provide for use of force in non-self-defense situations.

[96]*See generally* Malawer, *Anticipatory Self-Defense—Article 51 of the United Nations Charter and the Middle East War, 1967,* 8 INT'L PROBS. 14 (1970).

[97]For economic sanctions against Libya, see Exec. Order No. 12,543, 51 Fed. Reg. 1354-59 (1986); see *also* The President's News Conference of January 7, 1986, 22 WEEKLY COMP. PRES. Doc. 19 (Jan. 13, 1986), *reprinted in* 25 I.L.M. 173 (1986). For sanctions against Syria, see *White House, Expressing 'Outrage,' Imposes Several Sanctions Against Syrians,* N.Y. Times, Nov. 14, 1987, §1, at 4, col. 2. For sanctions against Iran, see *Iran Embargo: The Main Import is Political,* N.Y. Times, Oct. 11, 1987, §4, at 2, col. 1.

[98]*See generally* Abbott, *Economic Sanctions and International Terrorism,* 20 VAND. J. TRANSNAT'L L. 289 (1987).

[99]*See Iran Embargo: The Main Import is Political,* N.Y. Times, Oct. 11, 1987, §4, at 2, col. 1.

[100]*See* HOUSE AND SENATE SELECT COMMITTEE INVESTIGATING THE IRAN-CONTRA AFFAIR, THE REPORT OF THE CONGRESSIONAL COMMITTEES INVESTIGATING THE IRAN-CONTRA AFFAIR, H.R. Doc. No. 433, 100th Cong., 1st Sess. (1987). The Report states "[O]fficials viewed the law not as setting boundaries for their actions, but raising impediments to their goals. When the goals and law collided, the law gave way. . . ." *Id.* at 18. *See also* REPORT OF THE PRESIDENT'S SPECIAL REVIEW BOARD (THE TOWER COMMISSION REPORT) (1987).

[101]The Hague Peace Conference of 1907 produced a convention outlining the rights of neutral states in naval wars which stil has some application today. Convention Concerning the Rights and Duties of Neutral Powers in Naval War (Hague Convention XIII), Oct. 18, 1907, 36 Stat. 2415, T.S. No. 545. *See also* NORTON, *Between the Ideology and the Reality: The Shadow of the Law of Neutrality,* 17 HARV. INT'L L.J. 249, 297 (1976). The advent of the Covenant of the League of Nations and the UN Charter raised questions concerning the continued existence of the law of neutrality. However, it has recently been partially resurrected and has residual application in cases of limited and regional conflicts. *See* 2 P. O'CONNELL, THE INTERNATIONAL LAW OF THE SEA 1141 (1984).

[102]*See* NORTON, *supra* note 101, at 297-302.

[103]*Id.*

[104]*Reagan & the Philippines: A Winning Style,* N.Y. Times, Mar. 30, 1986, §6, at 31, col. 1; *The U.S. & Dictators,* N.Y. Times, Mar. 15, 1986, §1, at 1, col. 1 (discussing "democratic revolutions").

[105]*See supra* note 28 and accompanying text.

[106]The Reagan Administration's actions in aiding the overthrow of right-wing dictators (as in the Philippines and Haiti) by use of democratic means and subtle persuasion, coupled with its attempts to overthrow leftist dictatorships (as in Nicaragua and Grenada), could be conceptualized as a policy in fostering "democratic revolutions." Of course, it is possible to make too much out of these particular incidents in an attempt to construct a coherent foreign policy concept that may or may not actually be guiding the policymakers in the Reagan White House.

[107]*See Open U.S. Aid to Rebel Groups is Urged,* N.Y. Times, Apr. 1, 1986, at A3, col. 4.

[108]*See generally supra* note 28.

[109]As to "privatization" the President's Special Review Board found: "[T]his practice raises substantial questions. . . . Such involvement gives private and foreign sources potentially powerful leverage in the form of demands for return favors or even blackmail." REPORT OF THE PRESIDENT'S SPECIAL REVIEW BOARD (THE TOWER COMMISSION REPORT) pt. V, at 6-7 (1987). *See also The Price of Saudi Money,* N.Y. Times, Aug. 3, 1987, at A16, col. 1; *Franchising the Reagan Doctrine,* N.Y. Times, Feb. 8, 1987, §4, at 22, col. 1.

[110]*Crash of Envoy's Car Focuses Attention on International Law,* Legal Times, May 4, 1987, at 20.

[111]*Id.*

[112]Vienna Convention on Diplomatic Relations, *opened for signature* Apr. 18, 1961, art. 31, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95.

[113]*See* Diplomatic Relations Act, 22 U.S.C. §254(a)-(e) (1978).

[114]See RESTATEMENT (REVISED) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §461 comment d (Tent. Draft No. 6, 1985).

[115]The definition of combatants entitled to protection under international law in Article 1(4) of the proposed Protocol includes those fighting against colonial domination, alien occupation, or racist regimes in the exercise of their self-determination. *Text of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), reprinted in* 16 I.L.M. 1391 (1977).

[116]*Reagan Shelving Treaty to Revise Law on Captives,* N.Y. Times, Feb. 16, 1987 at A1, col. 6.

[117]*Id.; see also* Roberts, *The New Rules for Waging War: The Case Against Ratification of Additional Protocol I,* 20 VA. J. INT'L L. 109 (1985).

[118]*See Lawless & Foolish,* N.Y. Times, Feb. 11, 1987, at A27, col. 1.

[119]Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, art. VI, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161.

[120]*Id.* ("Parties to the Treaty undertake to pursue negotiations in good faith.").

[121]*See generally The U.S. Plan to Protect Kuwaiti Ships in the Gulf by Putting Them Under U.S. Flags,* 26 I.L.M. 1429-80 (1987) (various documents).

[122]*See supra* note 101.

[123]Ships of neutral states are subject to inspection and, if found to be carrying contraband, are subject to capture or destruction. Ships of belligerent states are subject to capture and destruction even if not carrying contraband. *See* P. O'CONNELL, supra note 101, at 1109-18.

[124]Geneva Convention on the High Sea, *opened for signature,* Apr. 21, 1958, art. 5(1), 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S 82 ("The State must effectively exercise its jurisdiction and control in administrative, technical and social matters over the ship flying its flag.").